

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES R. ADAMS,

Plaintiff,

v.

THE HON. JOHN CARNEY,
Governor of the State of Delaware,

Defendant.

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C.A. No. 1:17-CV-00181 (VAC-MPT)
JURY TRIAL DEMANDED

**APPENDIX TO THE HON. JOHN CARNEY'S OPENING BRIEF
IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT**

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

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Date: September 29, 2017

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In The Matter Of:

Adams v.

The Hone. John Carney

James R. Adams

September 13, 2017

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMES R. ADAMS,)
)
Plaintiff,)
)
v.) C.A. No.
) 1:17-CV-00181-MPT
THE HON. JOHN CARNEY,)
Governor of the)
State of Delaware,)
)
Defendant.)

Deposition of JAMES R. ADAMS
taken pursuant to notice at the offices of the
Department of Justice, 820 North French
Street, Wilmington, Delaware, beginning at
9:50 a.m., on Wednesday, September 13, 2017,
before Kimberly A. Hurley, Registered Merit
Reporter and Notary Public.

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1 JAMES R. ADAMS,
2 the witness herein, having first been
3 duly sworn on oath, was examined and
4 testified as follows:

5 BY MR. CONNELL:

6 Q. I know you have been through this
7 process before, but just the usual reminder
8 about verbalizing the responses, no hand
9 gestures. But I think you know the drill.

10 A. Yes.

11 Q. Could you just state your full name
12 for the record?

13 A. James Adams.

14 Q. I got your interrogatory responses,
15 and I did just want to clarify some stuff on
16 the dates.

17 A. Sure.

18 MR. FINGER: Do you have a copy
19 for me to review with you?

20 MR. CONNELL: I don't have
21 another copy.

22 MR. FINGER: We won't insist on
23 it unless Mr. Adams has a question.

24 MR. CONNELL: I'm just going to



1 ask questions about some of the things we're
2 going to discuss.

3 BY MR. CONNELL:

4 Q. It says that in 2015 you retired from
5 the DOJ?

6 A. Yes. I took my pension in the end of
7 2015. The last day of the year.

8 Q. You went all the way to the end of
9 2015?

10 A. Yes.

11 Q. Right before New Year's.

12 A. December 31st of '15 was my last day.

13 Q. What have you been doing
14 professionally since then?

15 A. I retired at the end of '15, and I
16 decided to take my own personal sabbatical for
17 a little while in '16 because I had never
18 taken any time off in my life. As a matter of
19 fact, I worked in high school, worked my way
20 through college, and worked forever. And I
21 always envied people that were able to take a
22 little time off. So since I had been working
23 forever, I started to take a few months off in
24 '16, and then made up my mind I was going to



1 take a year off and then go back to work the
2 beginning of '17.

3 So I went on emeritus status
4 through the Bar, knowing that I wasn't going
5 to work and kind of take a sabbatical in '16,
6 and then went back active the beginning of '17
7 when I decided I wanted to start working
8 again.

9 Q. I'm not familiar with emeritus status.

10 A. Without having the rules in front of
11 me, I'm not sure I will get it exactly
12 correct, but emeritus status, it reduces your
13 Bar fee, first of all, and you're not allowed
14 to do private practice. You can do pro bono
15 work, but no work for income, basically.

16 Q. Would you say the main benefit would
17 be reducing fee?

18 A. Reducing fee. Also to me was I wasn't
19 really planning on actively looking for a job
20 right at that time anyway, so it kind of made
21 sense, because what I had done was, I had
22 called the Bar Association and said, I want to
23 continue to be active, I want to continue to
24 work, but I want to take a sabbatical for a



1 little while, what's the best thing to do.
2 And it was actually -- it was actually their
3 response, why don't you go emeritus for a
4 while and then go back active when you're
5 actively looking for a job again. I kind of
6 took their recommendation on what to do.

7 Q. So 2016 and your emeritus status has
8 come and gone for a good way through 2017.
9 Are you --

10 A. I thought long and hard what I wanted
11 to do. I wanted to apply for a judicial
12 position. It was really the only thing that I
13 hadn't done in my career that I really wanted
14 to do. And that's what I decided to do when I
15 became active again.

16 Q. So you haven't been looking for other
17 opportunities?

18 A. No.

19 Q. I just wanted to confirm, your address
20 is in Townsend?

21 A. Yes.

22 Q. That's New Castle County?

23 A. Yes.

24 Q. Your interest now is applying for a



1 judicial vacancy of some sort.

2 A. Uh-huh.

3 Q. Could you elaborate a little bit on
4 what particular judicial positions interest
5 you?

6 A. I would apply for any judicial
7 position that I thought I was qualified for,
8 and I believe I'm qualified for any position
9 that would come up.

10 Q. On any of the courts?

11 A. On any of the courts. I would feel
12 less comfortable on Chancery than any other
13 court. I would feel most comfortable on
14 Superior Court, Family Court, Court of Common
15 Pleas, state Supreme Court based on my
16 background, experience, and what I have done
17 in my career.

18 Q. I notice in your interrogatory
19 responses you indicated that you had applied
20 for a Family Court commissioner job in --

21 A. 2009 I believe it was, yes.

22 Q. What prompted you to apply for that?

23 A. I was working in the Family Division.
24 I was supervising the Juvenile Delinquency and

1 Truancy Unit. I thought about -- I had
2 thought before about applying for a position,
3 but I was a little concerned about the need
4 for political connections to apply for a
5 position and get on the bench, and at that
6 time as a supervisor here, I had a lot of
7 contact with the chief judge of Family Court,
8 and the chief judge of Family Court, in
9 addition to a couple other judges in Family
10 Court, kind of said, you should apply. The
11 Chief judge in particular said she would like
12 to have me as a commissioner in Family Court,
13 that she thought I would be good as a
14 commissioner and she could work well with me.

15 Q. So you applied, but you were not
16 selected?

17 A. I was not selected.

18 Q. The commissioner jobs, do they go
19 through the JNC process?

20 A. Yes.

21 Q. So you had an interest in some sort of
22 a judicial position in 2009. Is there a
23 reason you didn't apply for any other judicial
24 positions since 2000, then?

1 A. When I was here at the Department of
2 Justice, I moved up from a regular deputy
3 position to supervisor of the Juvenile
4 Delinquency Unit. First, I was supervisor of
5 the Child Protection Unit and then supervisor
6 of the Juvenile Delinquency Unit and then
7 deputy state solicitor. So I was going
8 through a process where I was getting
9 promotions here. Since I was getting
10 promotions here, I was happy with what I was
11 doing. It became kind of secondary.

12 There was also -- I loved
13 working for Beau Biden, and I had a lot of
14 respect for Beau Biden, and I wanted to stay
15 here as long as Beau was Attorney General.
16 And loyalty is very important to me, and I
17 felt very loyal to Beau, and I didn't think it
18 was right to leave while Beau was here. And I
19 also in my mind had a hope that -- I think a
20 number of us felt that Beau was eventually
21 going to run for governor, and my hope was
22 that he would stay here as attorney general
23 until the time he ran for governor, and I
24 thought I would eventually find some spot to



1 stay in state government with Beau as
2 governor.

3 Things changed when Beau got
4 ill, and then in, I think it was, 2014, if I
5 remember, a couple positions came up, and I
6 thought of applying, but they were republican.
7 They were designated as republican positions.
8 So I couldn't apply.

9 And then Beau died. That
10 also -- Beau dying also had an impact on me,
11 and what I did over that next year, year and a
12 half up until now, because when Beau died, it
13 had a personal impact on me because I really
14 admired Beau, but it was also --
15 professionally it kind of changed direction or
16 possibilities that professionally I would have
17 thought about.

18 Q. I can't recall. Did Beau step down
19 from AG before he passed away?

20 A. Yes. He finished his term in -- let
21 me see if I get -- the end of '14, and
22 Matt Denn was elected at the November of '14
23 and -- but Beau had announced before he left
24 that he was running for governor and then he



1 died in '15. He died during that last year
2 that I was still here.

3 And Beau, although he was very
4 ill, I think was still hoping that he would
5 recover. And a lot of us were praying for the
6 same thing. So that last year when I was
7 still here he still officially was running for
8 governor.

9 Q. So the transition from Beau to Matt
10 was in January of 2015?

11 A. Yes.

12 Q. It all runs together for me.

13 A. Yes.

14 Q. Let me ask you another question about
15 dates. You indicated in the interrogatory
16 that you switched your party affiliation in
17 2017?

18 A. Yes.

19 Q. Can you be a little more specific on
20 when?

21 A. I think I listed it in the
22 interrogatory. If not, I don't have the date
23 like right in front of me, but it was in the
24 beginning of 2017.



1 Q. I think you just put 2017.

2 A. I can get the date -- I don't have the
3 date right in front of me.

4 MR. FINGER: Be careful not to
5 talk over each other.

6 BY MR. CONNELL:

7 Q. So beginning of 2017 works for me.

8 A. It was the beginning of 2017. I mean,
9 I have the date. I have a voter registration
10 card. I can provide that information. I just
11 don't have it in front of me.

12 Q. Would you happen to know off the top
13 of your head if it was January or February?

14 A. It was probably January or February I
15 would say.

16 MR. FINGER: We will be happy to
17 provide that.

18 BY MR. CONNELL:

19 Q. Other than your counsel, Mr. Finger,
20 who have you discussed this lawsuit with?

21 A. Joel Friedlander, who's an attorney
22 here in Wilmington.

23 Q. Do you know when you first
24 communicated with him about this?

1 A. When I decided that I wanted to pursue
2 this, I had done a little bit of research. I
3 was aware of this issue for years. This
4 wasn't something that just came up now. I was
5 aware of this issue for years and discussed it
6 with other people for years, including people
7 in this office who, in private conversations,
8 had said that the political balance part of
9 the constitution was unconstitutional. And
10 people who had said to me that someone needs
11 to challenge sometime.

12 So when this came up and I
13 decided to do this, I had went back and done a
14 little bit of research. I had researched some
15 of this in the past just out of curiosity, but
16 this time when I researched it, I saw a Law
17 Review article that Joel Friedlander had
18 written for Arizona Law Review recently, over
19 the past couple years. And I had never read
20 it before. And it was excellent, and it had
21 all the points in it that I had always
22 thought.

23 And so I called him up and said,
24 you know, "I just read your Law Review



1 article. I'd like to pursue this." And we
2 talked. He gave me the names of a couple of
3 attorneys, and that's how...

4 Q. Do you know when that conversation
5 with Friedlander was?

6 A. Again, it would have been the
7 beginning of that -- beginning of this year,
8 January/February.

9 Q. So very shortly before you filed this?

10 A. Yeah. Beginning of the year. It was
11 not -- it was sometime this year, put it that
12 way. Beginning of the year, January/February.

13 Q. You say this has been an issue on your
14 radar for years.

15 A. Oh, yes.

16 Q. Maybe you can't, but do you have any
17 idea how many years, like how long this has
18 been on your radar?

19 A. Fifteen, twenty years. I don't
20 remember the first time I ever had a
21 discussion about this, but I remember having a
22 lengthy discussion with the division director
23 here in the Department of Justice a few --
24 number of years ago, going back 10 or 12 years



1 ago, and saying to the division director here,
2 who was actually applying to be a judge: "How
3 do they justify this as being constitutional?
4 It's unconstitutional."

5 And the division director, who
6 was applying to be a judge, said, "Oh, yeah,
7 it's unconstitutional. Most people know it's
8 unconstitutional, but nobody wants to
9 challenge it because they know it will injure
10 their career."

11 I actually brought it up in
12 informal conversations with judges at Family
13 Court on more than one occasion and said, "How
14 does this continue? It's unconstitutional."

15 And they said, "Yeah, but it's
16 like the Delaware way and no one's going to
17 challenge it. So as long as no one challenges
18 it, it's going to stay that way."

19 With other attorneys I discussed
20 this through the years and they pretty much
21 said, look, a younger, up-and-coming attorney
22 is not going to challenge the
23 constitutionality of the political balance for
24 judicial appointments because it will have a



1 negative impact on their career, so why would
2 they. What they will do is join one party or
3 the other and work as hard as they can for
4 that party and make political contributions
5 and work the system to try to get on the
6 bench. They're not going to get anything out
7 of fighting it because it's unconstitutional.

8 So I have had that conversation
9 with people for years, a lot of years, and all
10 the conversations I had with people that I
11 said, "I don't understand how this is
12 constitutional. It seems unconstitutional to
13 me," I think everyone I ever talked to agreed
14 with me and said, yeah, it's unconstitutional,
15 but it's the way it's done in Delaware.

16 Q. Is it your position that politics
17 don't play a role in other jurisdictions?

18 A. No, but as far as I know, Delaware is
19 the only jurisdiction that requires political
20 balance and that divvies up positions based
21 solely on politics, political parties, and
22 that eliminates any possibility of other than
23 democrats and republicans serving on certain
24 courts.



1 I mean, if we were sitting here
2 and talking about anything other than
3 requirements being political, we wouldn't be
4 having this discussion. If Delaware had a
5 constitution that said, you know, a certain
6 race or religion or gender was eliminated from
7 being judges, everyone would say that's
8 obviously discrimination. About one-quarter
9 to one-third of the population in Delaware is
10 registered as independents; they're not
11 allowed to be judges.

12 Q. You would say in the federal system it
13 would be unusual, in your experience, for a
14 president to appoint someone outside of his
15 party?

16 A. As far as I know, there is no
17 requirement in the federal system that says
18 you have to be a member of a specific party to
19 apply for that position. As a matter of fact,
20 I read an article in the paper just a week or
21 so ago about the speculation of who would be
22 the new federal judge here in Delaware, and it
23 was two republicans and a democrat. I mean,
24 whoever is making that choice can make their



1 choice, but you don't eliminate the
2 possibility of someone applying for the
3 position.

4 Q. On the subject of politics, you
5 indicated, and we discussed it, that this year
6 you switched your party affiliation from
7 democrat to independent.

8 What prompted that change?

9 A. There's probably two or three factors
10 went into that. I have been a democrat my
11 whole life and actually worked within the
12 democratic party here in Delaware, worked
13 within my district in the democratic party and
14 gave that up because I was very frustrated
15 with the workings of the democratic party when
16 I volunteered.

17 I am a progressive, and I tend
18 to be much more progressive and liberal than
19 democrats in Delaware. Most democratic
20 leaders in Delaware to me are not really
21 progressive democrats. In most states they
22 would be moderate republicans. I don't
23 consider people like Senator Carper a
24 progressive democrat. I worked in this office



1 and saw a lot of the workings behind the
2 scenes with the Markell administration and I
3 thought that Governor Markell performed more
4 as a republican than a progressive democrat.

5 So I had a frustration with --
6 and I think a number of progressives have a
7 frustration with the Delaware democratic party
8 anyway.

9 But the one person that I really
10 had hoped for and admired was Beau Biden, who
11 I did think was progressive, and I was in
12 meetings with Beau on so many occasions. I
13 knew he was different and knew he was the one
14 that I had hopes that something would change
15 within the democratic party in Delaware
16 because of Beau. But when Beau died, to me
17 that didn't leave anybody that I could really
18 align with, feel comfortable -- as comfortable
19 with in Delaware.

20 And then during the presidential
21 campaign, which I spent, like everybody else
22 spent, a lot of time following, I admired
23 Bernie Sanders and what he stood for and what
24 he did and the message he gave out, and I



1 think if Bernie Sanders would have been
2 nominated, he would be beat Trump in an
3 election, and I think the fact that he wasn't
4 gave us Trump as a president.

5 So at some point the combination
6 of everything combined with me led me to think
7 that I should change party registration to an
8 independent. So if -- independents are
9 independents for different reasons. I would
10 probably consider myself more of a Bernie
11 independent because I consider myself in a
12 different position than democrats at this
13 point. And that's not just maybe locally but
14 nationally at this point, because I think if
15 the democratic party starts to change and go
16 in that direction, they're going to face
17 difficulty.

18 So it was a personal -- that's a
19 long answer, but it was a personal choice
20 based on a lot of thought and a lot of process
21 that went over a pretty long period of time.

22 Q. I understand what you're saying, but
23 wasn't it sort of obvious that the machine was
24 kind of working against Bernie Sanders well



1 before 2017?

2 MR. FINGER: I think you have to
3 lay a foundation for him to be able to answer
4 that question.

5 BY MR. CONNELL:

6 Q. I think you sort of testified that you
7 felt that Sanders sort of got nucleated out of
8 the running.

9 A. That's not what I meant, if that's the
10 way it came off. What I meant was that I
11 think that -- I think people become energized
12 by certain politicians and the idea and
13 policies that they present, and I felt myself
14 energized by Bernie Sanders and what he -- the
15 message he had. And I have found over a
16 number of years that I'm not as energized by
17 what's often a much more moderate message from
18 democrats here locally in Delaware and
19 sometimes nationally. So that kind of doesn't
20 leave a lot of choices in terms of party
21 affiliation.

22 Q. You mentioned in this deposition and
23 in your interrogatories that you were
24 interested in applying to some judicial



1 positions I think in '14?

2 A. I think there was a Superior Court --
3 if I can recall correctly, a Superior Court
4 position and Supreme Court position.

5 Q. Just look that over for a minute.

6 A. (Complied.)

7 I don't recall, to be honest. I
8 don't recall this position. And I don't know
9 at that point in year what was going on in
10 '14. So I don't -- no, I don't recall.

11 Q. My only question is: By looking that
12 over, you'd agree that you were qualified to
13 apply for that job?

14 A. Qualified -- I think I'm qualified to
15 apply for any judicial position. The
16 constitution says I'm only qualified for this
17 position. I'm qualified for any judicial
18 position. But at that point -- at that point,
19 under the constitution's guideline of who's
20 qualified for judicial positions, I was
21 registered as a democrat, so I would have
22 qualified for this position, although there
23 were other positions that year that were
24 limited to republicans that, according to the



1 Delaware constitution, I was not qualified
2 for.

3 It's kind of like those old
4 discrimination cases about whether you're in
5 front of the bus or the back of the bus. The
6 Delaware constitution has decided that
7 sometimes independents are allowed in the back
8 of the bus and sometimes they can't get on the
9 bus.

10 Q. I was just asking --

11 A. Yes, I could have gotten the back of
12 the bus on that one, yes.

13 Q. You were democrat at the time?

14 A. Yes.

15 Q. You had the qualifications --

16 A. At that point, yes.

17 Q. So you believe you had the
18 qualifications in terms of legal skills and
19 party for that --

20 A. For that opening, yes.

21 MR. CONNELL: Could we put that
22 in as an exhibit?

23 (Adams Deposition Exhibit No. 1
24 was marked for identification.)



1 MR. CONNELL: Let me mark this
2 one in advance as the next exhibit.

3 (Adams Deposition Exhibit No. 2
4 was marked for identification.)

5 BY MR. CONNELL:

6 Q. Could you just look at the first part
7 of that notice under "Justice of the Supreme
8 Court of the State of Delaware"?

9 A. This one here?

10 Q. I'm sorry. This one. On Exhibit 2.

11 A. Okay.

12 Q. My only question is basically what it
13 was before which is: You would agree that you
14 were constitutionally qualified for that
15 judicial position, correct?

16 A. Yes.

17 Q. That's all I've got on that one.

18 (Adams Deposition Exhibit No. 3
19 was marked for identification.)

20 BY MR. CONNELL:

21 Q. You looked it over?

22 A. Yes.

23 Q. Same question: You'd agree you were
24 constitutionally qualified for that job?



1 A. Yes.

2 Q. I think I'm almost done.

3 MR. FINGER: With exhibits or
4 the entire thing?

5 MR. CONNELL: We're getting
6 close to being done.

7 MR. FINGER: I think we can
8 stipulate that any opening that required the
9 democratic appointment my client was qualified
10 for.

11 MR. CONNELL: Or in these cases,
12 I suppose these were --

13 MR. FINGER: There's one that
14 said either party.

15 BY MR. CONNELL:

16 Q. We would agree that you were
17 constitutionally qualified for --

18 A. Yes.

19 MR. CONNELL: If we agree on
20 that, I don't think we have much more to do
21 here today.

22 MR. FINGER: You're running the
23 show.

24 MR. CONNELL: Let me just check

1 through my notes. I think we hit all the high
2 points here.

3 BY MR. CONNELL:

4 Q. Just to go back to the one question.
5 You mentioned you discussed this with
6 Joel Friedlander. Was there anybody beyond
7 him and your attorney you discussed this with?

8 A. No.

9 MR. FINGER: Let me clarify.
10 You mean outside of discussions with lawyers?
11 Are you talking about just lawyers now?

12 MR. CONNELL: I guess I meant it
13 to be a broader question.

14 BY MR. CONNELL:

15 Q. Outside of your family. I don't need
16 to know that.

17 A. No, not that I can recall, no,
18 actually.

19 Q. You can provide me with a copy of your
20 voter registration card?

21 A. Yes.

22 MR. CONNELL: I don't have
23 anything else.

24 MR. FINGER: No counter. I



1 would like to read and sign.

2 THE COURT REPORTER: Would you
3 like a copy of the transcript?

4 MR. FINGER: Yes.

5 (Deposition concluded at
6 10:20 a.m.)

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T E S T I M O N Y

DEPONENT: JAMES R. ADAMS PAGE
 Examination by Mr. Connell.....3

E X H I B I T S

ADAMS DEPOSITION EXHIBIT NO. MARKED

Exhibit 1 - Email dated October 15, 2014...23

Exhibit 2 - Document entitled, "Notice,"
 dated July 28, 2014.....24

Exhibit 3 - Email dated April 23, 2014.....24

DIRECTIONS NOT TO ANSWER	PAGE	LINE
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NONE

REQUESTS MADE FOR DOCUMENTS	PAGE	LINE
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NONE

ERRATA SHEET/DEPONENT'S SIGNATURE	PAGE	30
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CERTIFICATE OF REPORTER	PAGE	31
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1 READING AND SIGNING INSTRUCTIONS

2
3
4 After reading the transcript of your
5 deposition, please note any change or
6 correction and the reason therefor on the
7 errata sheet that appears on the following
8 page. DO NOT MAKE ANY MARKS OR NOTATIONS ON
9 THE TRANSCRIPT ITSELF. Please sign and date
10 the errata sheet and return it to our office
11 at the address indicated below. Our office
12 will distribute copies of the executed errata
13 sheet to all counsel. If necessary, you can
14 make additional copies of the errata sheet.

15
16 Rule 30(e) governing this procedure provides
17 the deposition may be filed as transcribed if
18 you do not return a signed errata sheet within
19 30 days.

20
21 RETURN ORIGINAL ERRATA SHEET TO:

22 Wilcox & Fetzer, Ltd.

23 1330 King Street, Wilmington, DE 19801

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DEPONENT: JAMES R. ADAMS
 DATE: SEPTEMBER 13, 2017
 CASE: ADAMS v. THE HON. JOHN CARNEY

ERRATA SHEET

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I have read the foregoing transcript of my deposition and, except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

Date:

Signature of Deponent



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1 CERTIFICATE OF REPORTER

2
3 State of Delaware)4 New Castle County)
5
67 I, Kimberly A. Hurley, Registered Merit
8 Reporter and Notary Public, do hereby certify
9 that there came before me on Wednesday,
10 September 13, 2017, the deponent herein,
11 JAMES R. ADAMS, who was duly sworn by me and
12 thereafter examined by counsel for the
13 respective parties; that the questions asked
14 of said deponent and the answers given were
15 taken down by me in Stenotype notes and
16 thereafter transcribed by use of
17 computer-aided transcription and computer
18 printer under my direction.19
20 I further certify that the foregoing is a
21 true and correct transcript of the testimony
22 given at said examination of said witness.23
24 I further certify that I am not counsel,
attorney, or relative of either party, or
otherwise interested in the event of this
suit.25
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Kimberly A. Hurley, RPR, RMR

Dated: September 20, 2017

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Connell, Ryan (DOJ)

From: doeLegal on behalf of Delaware Attorney Listserv (Courts)
<notify_listservAttorneys@doelegal.com>
Sent: Wednesday, October 15, 2014 2:45 PM
To: Connell, Ryan (DOJ)
Subject: [DELAWARE COURTS] JNC Notice of Vacancy - President Judge Superior Court
Importance: High

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following offices can be filled by the appointment of the Governor with the concurrence of the Senate:

President Judge of the Superior Court
of the State of Delaware

(Due to the appointment of The Honorable James T. Vaughn, Jr. to the Delaware Supreme Court)

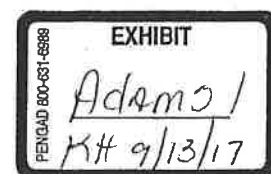
There are requirements of political balance under Art. IV, § 3 of the Delaware Constitution and, in this case, the appointee must be a member of the Democratic Party, a current Judge of the Superior Court, or both. The appointee must be a citizen of the State of Delaware and learned in the law. The position provides a current annual salary of \$191,360.

Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Staci Hammonds or can be downloaded online at <http://courts.delaware.gov> by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than 12 noon, November 3, 2014, at the below-listed address. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
The Hon. William B. Chandler, III, Chairman
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: October 10, 2014



NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following offices can be filled by the appointment of the Governor with the concurrence of the Senate:

Justice of the Supreme Court of the State of Delaware
(Due to the retirement of The Honorable Carolyn Berger)

There are requirements of political balance under the Delaware Constitution Art. IV § 3 and, in this case, the appointee must be a member of the Democratic Party. The appointee must be a citizen of the State of Delaware and learned in the law. The position provides a current annual salary of \$ 191,860.

Commissioner of the Superior Court, New Castle County
(Due to the retirement of The Honorable Michael P. Reynolds)

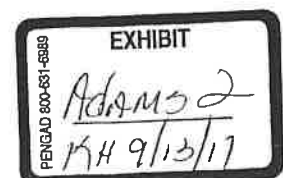
There is a requirement of political balance under 10 Del.C. § 511(a) and, in this case, the appointee may be a member of either party. There also are requirements that the appointee be a resident of New Castle County and duly admitted to practice before the Supreme Court of the State of Delaware. The position provides a current annual salary of \$111,275.

Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Staci Hammonds or can be downloaded online at <http://courts.delaware.gov> by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than 12 noon, August 27, 2014, at the below-listed address. Interviews of candidates will be scheduled thereafter. It is anticipated that interviews for the foregoing positions will be conducted by the Judicial Nominating Commission, and by the Governor for candidates recommended by the Commission, during the week of September 8, 2014.

Judicial Nominating Commission
William B. Chandler, III, Chairman
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: July 28, 2014



Connell, Ryan (DOJ)

From: dsba-bounces@barlist.delawlist.org on behalf of Courts Listserv <courts@dsba.org>
Sent: Wednesday, April 23, 2014 2:15 PM
To: dsba@delawlist.org
Subject: [DSBA] Notice from the Judicial Nominating Commission
Attachments: ATT00001.txt

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following office can be filled by the appointment of the Governor with the concurrence of the Senate:

Justice of the Supreme Court of the State of Delaware
(Due to the retirement of Justice Jack B. Jacobs)

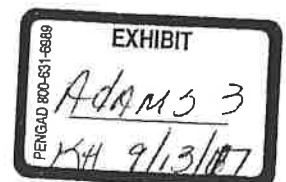
There are requirements of political balance under the Delaware Constitution Art. IV § 3 and, in this case, the appointee may be a member of either the Democratic Party or the Republican Party. The appointee must be a citizen of the State of Delaware and learned in the law. The position provides a current annual salary of \$191,860.

Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Mary Ellen Greenly or can be downloaded online at <http://courts.delaware.gov> by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than 12 noon, May 21, 2014, at the below-listed address. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
William B. Chandler III, Chairman
Wilson Sonsini Goodrich & Rosati, P.C.
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: April 23, 2014



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES R. ADAMS,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 17-00181 MPT
)	JURY TRIAL DEMANDED
THE HON. JOHN CARNEY,)	
Governor of the State of Delaware,)	
)	
Defendant.)	

**RESPONSE TO FIRST SET OF INTERROGATORIES
DIRECTED TO PLAINTIFF**

Plaintiff James R. Adams ("Adams"), by and through his undersigned attorney, hereby responds to the First Set of Interrogatories Directed to Plaintiff.

INTERROGATORIES

1. Identify all documents or other items of evidence that you intend to use in this lawsuit, for any purpose, including, but not limited to cross-examination, during any pretrial or trial proceedings.

Answer:

Plaintiff objects to Interrogatory 1 on the ground that it intrudes improperly into attorney thought processes and trial strategy. *Avalon Construction-Ruidoso, LLC v. Mueller Company Inc.*, 2014 WL 12597809 at *6 (D. N.M. Jan. 3, 2014). *See also See Rosenblatt v. Getty Oil Co.*, 1982 WL 17836 at *2 (Del. Ch. Oct. 8, 1982) (not required to disclose witnesses before pre-trial order). Subject to and without waiver of the foregoing objection, Adams states that he has not yet

determined what evidence he intends to use in the lawsuit beyond those documents attached to or referred to in the Complaint.

2. Identify in chronological order your current and former employers, dates of employment, addresses of employers, positions, and duties and responsibilities of each position, and the amount of pay for each position.

Answer:

Delaware Department of Justice ("DOJ"), 2003-2015 (salary at DOJ started at approximately \$60,000 in 2003 and ended at approximately \$116,000 in 2015):

1. Family Division Deputy Division Director, 2015. Directed and managed the Family Division from a policy and procedures and personnel perspective in Kent and Sussex Counties. Represented the DOJ at court proceedings and meetings statewide.

2. Deputy State Solicitor, 2012-2014. Assistant Division Head to the State Solicitor for the Civil Division. Directed and managed the Civil Division Offices in terms of facilities as well as administration, including all personnel matters within the Division including fifty-three Deputy Attorneys General and eighteen support staff. Supervised the outside counsel program.

3. Unit Head, Juvenile Delinquency and Truancy Unit, Family Division, 2008-2012. Statewide Unit Head of the Family Division Unit that prosecuted all juvenile delinquency and truancy cases in all three counties. Supervised a staff of attorneys, paralegals, social workers and other support staff.

Represented the Attorney General and the Department of Justice on a variety of juvenile justice committees.

4. Unit Head, Child Protection Unit, Family Division, 2007-2008.

Supervised the statewide unit that represented the Division of Family Services in dependency, neglect and abuse cases and child protection registry cases in Family Court. Also provided general counsel services to all divisions of the DSCYF including Child Mental Health, Youth Rehabilitative Services, and Child Care Licensing.

5. Deputy Attorney General, DNREC Brownfields Program, 2006-

2007. Represented DNREC in the Brownfields Program, negotiated Brownfields Development Agreements and Voluntary Cleanup Agreements. Advised DNREC on issues related to the Hazardous Substance Cleanup Act.

6. Deputy Attorney General, Child Protection Unit, 2003-2006.

Represented the Division of Family Services and litigated dependency, neglect and abuse cases and child protection registry cases through all stages of the litigation process including termination of parental rights trials and appeals to the Delaware Supreme Court.

James R. Adams, Attorney at Law, 2002-2003 (income approximately \$70,000 a year). Solo practitioner. A major portion of his practice was contractual

for Family Court and included representing parents in dependency, neglect and abuse cases and also in child support arrears cases.

Bankruptcy Attorney, Richards, Layton & Finger, 2000-2002 (salary started at \$90,000 and ended at \$115,000). As a litigation associate in Richards, Layton & Finger's Corporate Bankruptcy Department, he drafted adversary and litigation motions, complaints, discovery requests and internal written analyses of cases.

Assistant Public Defender/Psycho Forensic Evaluator, Delaware Office of the Public Defender, 1999-2000 (salary approximately \$45,000). Adams assisted attorneys in trial preparation by providing evaluations on the mental health and substance abuse treatment needs of defendants. As a Rule 55 attorney, he represented criminal defendants at bail hearings.

Chief Presentence Officer, Superior Court, 1990-1999, (beginning salary approximately \$28,000 and ending salary approximately \$42,000). Adams served as supervisor of the Kent County Presentence Office that provided Presentence services to both the Superior Court and the Court of Common Pleas. Adams supervised both professional and clerical staff, and provided statistical and policy reports on sentencing issues to the President Judge of Superior Court.

Pretrial Services Officer/Probation and Parole Officer, Delaware Department of Correction, 1980-1990, (beginning salary approximately \$16,000 and ending salary approximately \$25,000 a year). Adams was the Pretrial Officer assigned to

establish the pretrial component of the Post-Arrest Processing Center. He conducted background investigations and made bail recommendations to the court. He supervised a caseload of individuals on Pretrial Supervision and also maintained a probation and parole caseload.

3. Describe your formal education from High School onward. Include the name and address of each educational institution or school, the dates of your attendance and the degree(s) awarded.

Answer:

Pitman High School, Pitman, New Jersey. Graduated 1969.

Ursinus College, Collegeville, Pennsylvania. BA, Political Science, 1979.

Delaware Law School, Wilmington, Delaware. JD, *Cum Laude*, 2000.

4. Identify in chronological order every political party affiliation you have held since your admission to the Delaware Bar, including the dates during which you held such political party affiliation.

Answer:

2000-2016 – Democrat.

2017- Independent.

5. State the date of your admission to the Delaware Bar and the status of your license to practice law in Delaware in each subsequent year since your admission, including the dates of any change in status.

Answer:

Admitted under Rule 55 in 2000.

Admitted December 2001.

Active 2001 through February 2016.

February 2016-December 2016 – Emeritus.

January 2017-present –Active.

6. Identify in chronological order every address at which you have physically resided for a period of at least 30 consecutive days at any time since your admission to the Delaware Bar.

Answer:

465 Gum Bush Road, Townsend, Delaware 19734.

7. Identify, including applicable dates, any judicial openings to which you have applied.

Answer:

Family Court Commissioner – July 2009.

8. Identify, including applicable dates, any judicial openings to which you would have applied but did not because of your political affiliation.

Answer:

In 2017 Adams wanted to apply for Supreme Court and Superior Court openings, but as an Independent he was not permitted by the Delaware Constitution to apply for those positions.

In 2014, while registered as a Democrat, Adams wanted to apply for openings on the Supreme Court and Superior Court, but the applicants for those specific opening were required by the Delaware Constitution to be members of the Republican Party, and so he was ineligible.

9. Identify any judicial opening that you expect will become open in the next year that you are interested in applying for.

Answer:

Adams has no knowledge of what judicial positions may become open in the next year. He would seriously consider and apply for any judicial position for which he feels he is qualified.

10. Identify each court on which you believe that you are qualified to serve as a judicial officer and for each court identified describe your qualifications for that position.

Answer:

Adams believes that he meets the minimum qualifications to apply for any judicial officer position. If allowed to apply for judicial openings he could provide detailed background on himself and his to the Judicial Nominating Commission so they could evaluate his background and determine whether his name should be submitted to the Governor for consideration, As a registered Independent, however, he is prevented from even participating in the evaluation process based on his political affiliation.

11. For each court identified in Question #8, describe how the Delaware Constitution currently inhibits your ability to apply for a judicial officer position.

Answer:

As a registered Independent Adams is constitutionally barred from applying for judicial positions on the Delaware Supreme Court, the Delaware Court of

Chancery and the Delaware Superior Court. Even if he were Democrat or Republican, he would still be restricted from certain positions due to the political balance requirement of the Delaware Constitution.

AS TO OBJECTIONS ONLY:

/s/ David L. Finger
David L. Finger (DE Bar ID #2556)
Finger & Slanina, LLC
One Commerce Center
1201 N. Orange St., 7th floor
Wilmington, DE 19801-1186
(302) 573-2525
dfinger@delawgroup.com
Attorney for plaintiff James R. Adams

Dated: September 1, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMES R. ADAMS,

Plaintiff,

v.

THE HON. JOHN CARNEY,
Governor of the State of Delaware,

Defendant.

)
)
)
)
) C.A. No. 17-00181 MPT
) JURY TRIAL DEMANDED
)
)
)

SWORN VERIFICATION OF JAMES R. ADAMS

STATE OF DELAWARE)

) ss.

COUNTY OF NEW CASTLE)

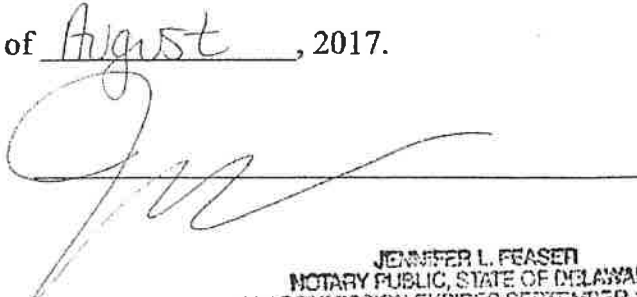
James R. Adams, duly sworn according to law, states as follows:

My name is James R. Adams. I am over twenty-one years of age and have personal knowledge of the facts stated in this affidavit. The answers to the foregoing Interrogatories are true as to my own activities, and on information and belief as to the actions of others.


James R. Adams

SWORN TO AND SUBSCRIBED BEFORE ME, a Notary Public of the State
and county aforesaid of this 31st day of August, 2017.





JENNIFER L. PEASE
NOTARY PUBLIC, STATE OF DELAWARE
MY COMMISSION EXPIRES SEPTEMBER 10, 2017.

STATE of DELAWARE
70-00-000NEW CASTLE COUNTY
820 N FRENCH ST
WILMINGTON, DE 19801

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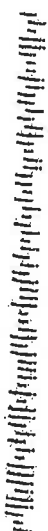
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DEBATES AND PROCEEDINGS
of the
CONSTITUTIONAL
CONVENTION
of the
STATE OF DELAWARE

Reported by Charles G. Guyer and Edmond C. Hardesty, Esqs.,
Stenographers to the United States Courts and
Courts of Delaware.

Commencing December 1, 1896,
Dover, Delaware

VOLUME II

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State of Delaware
1958

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MILFORD, DELAWARE

been a long while engaged in this work. And we do want the instruction of this Committee of the Whole upon certain features which have entered into our work heretofore, and we cannot deal with that work with any sort of confidence (which work involves a great deal of labor) until we know that certain features meet the approval of the Convention. I do not think that in any aspect, or in any system which the Committee could recommend, will it be found desirable to retain the present disqualification of the resident Judge. I think it would be highly undesirable to retain that disqualification. I think if you will give us that instruction that we are to restore to him his full capacity to sit in any part of the State, that we would have a larger amount of material in the given number of men to deal with in forming the Bench.

NATHAN PRATT: Mr. Chairman, that is entirely satisfactory so far as I am concerned.

WILSON T. CAVENDER: I would say Mr. Chairman, that this Committee of the Whole owes this Standing Committee on the Judiciary many thanks for not embarrassing the Committee of the Whole by bringing in a report upon which we cannot agree. Our report was an unanimous report, so that the Committee of the Whole is not embarrassed.

JOHN BIGGS: Question on the motion.

CHAIRMAN CARLISLE: The question is on the adoption of paragraph "b" of the report.

Motion put and carried.

WILLIAM C. SPRUANCE: Mr. Chairman, I ask that the Secretary read paragraph "c" of the report.

CHAIRMAN CARLISLE: The Secretary will please read paragraph "c" of the report.

Whereupon the Secretary read paragraph "c" of the report as follows:

"Section . . . The Judges shall be appointed by the Governor by and with the consent of three-fifths of all the Members elected to the Senate for the term of twelve years, and if a vacancy shall occur by expiration of term or otherwise at a time when the Senate shall not be in session the Governor shall within thirty days after the happening of any such vacancy convene the Senate for the purpose of confirming his appointment to the said vacancy and such other Executive business as may come before it for action."

WILLIAM C. SPRUANCE: Mr. Chairman, I move the adoption of paragraph "c" of the report.

JAMES B. GILCHRIST: I second the motion.

WILLIAM C. SPRUANCE: Mr. Chairman, this is a paragraph which has been the subject of very great and repeated consideration of the Committee. I came down here very much in favor of an elective system, and I am now in favor of it; but I found that in spite of all I could say to my associates on the Committee, I could not

bring them to me I had from one before we came about by my ar

I also came that was that I did not expect to agree with me only in some cases there was a difference I yielded Governor should be desirable that the Governor's Senate; that is, them, but a system appointing power, say, the number nor without ec

I have no states, but I did I made a tabulation pointed. While is that of the eight) I did not elected. But I haven't any four states where Senate was in instances, I think two-thirds vote not appointed sylvania while inferior appointments. That state it

But after three-fifths vote to the term I think, almost tenures ought opinion as to term, others years; but it was settled

Now the Judge dies appointed by provision he or otherwise Governor's vacancy cor

bring them to my line of thought; and, indeed, the slight support that I had from one or two others of my colleagues fell away from me before we came to this conclusion. Whether that result was brought about by my argument, or not, I do not know.

I also came down to this Convention with another thought, and that was that while I had very decided views upon many subjects, I did not expect to have everything my way; I did not expect everybody to agree with me; and I tried to get my mind in a frame to yield, not only in some cases where my judgment was the other way, but where there was a decided preponderance of sentiment against me, and I hope I yielded gracefully. In other words, we all agreed that the Governor should appoint; we all agreed that it was extremely undesirable that that appointment should be as it is now, wholly upon the Governor's will, but that there ought to be a confirmation by the Senate; that that not only was in accordance with the Federal system, but a system which prevails, I think, everywhere where the appointing power of judges is reserved to the Governor. And let me say, the number of States where the power is reserved to the Governor without confirmation, is very small.

I have not lately examined the constitutions of the different states, but I did so a number of years ago—probably about ten—and I made a tabulated list of the states wherein the judges were appointed. While I cannot now give the exact figures, my recollection is that of the whole number (and of which I think there were thirty-eight) I did not find but three or four in which the judges were not elected. But, as I say, the sentiment is against elective judges, and I haven't anything more to say about it. But in the two or three or four states where the Governor did appoint, a confirmation by the Senate was required. Sometimes that confirmation, in one or two instances, I think, is by a simply majority, but in most cases by a two-thirds vote. I am told that in Philadelphia, while the judges are not appointed, without confirmation, there are a few offices in Pennsylvania which to fill do not require confirmation, and they are a few inferior appointments; but in all cases except a few inferior appointments, there is a confirmation required by the Senate, and in that state it is a two-thirds vote.

But after turning this all over, we came to the conclusion that a three-fifths vote would be a safe number to make a confirmation. As to the term of years, from the very beginning, this Committee were, I think, almost unanimous, and at the end entirely unanimous that life tenures ought to be abolished. There was some little difference of opinion as to the term of years, some thinking ten years the proper term, others twelve years, others fourteen years and others fifteen years; but after very mature deliberation the term of twelve years was settled upon, and I think it is a good safe term.

Now then, you will observe it is not contemplated that when a Judge dies or resigns there is going to be a vacancy, or somebody appointed until the next meeting of the Legislature, but there is a provision here that when a vacancy shall occur by expiration of term or otherwise at a time when the Senate shall not be in session, the Governor shall within thirty days after the happening of any such vacancy convene the Senate for the purpose of confirming his appoint-

ment to the said vacancy. That is not convening the whole Legislature, but convening the Senate, which would be done at a very small expense; and it is very desirable. That is a desirable provision because we do not want a man appointed with the uncertainty as to whether, in his official duties, he is going to be confirmed by the Senate. Thirty days seemed to be as short a time as would be desired to make the necessary arrangements to call the Senate together, and then upon their confirmation for him to be appointed.

DAVID S. CLARK: Mr. Chairman, I have a substitute which I desire to offer for this paragraph "c", and if the Chair will permit me, I will read it.

CHAIRMAN CARLISLE: If there is no objection the gentleman will read the substitute. There being none, the gentleman may proceed.

DAVID S. CLARK: The substitute I desire to offer is as follows:

"The Judges shall be elected by the people for the term of eight years, and if any vacancy shall occur by death or otherwise, the Governor shall appoint and fill the vacancy until the next general election shall be held after the vacancy shall have occurred."

I would just state the reasons why I offered this substitute. I would not stand on eight years, but I am willing and will consent to have it amended for a less term.

CHAIRMAN CARLISLE: You offer that as an amendment?

DAVID S. CLARK: I offer this as a substitute to paragraph "c". This is a question that I have thought a great deal about, not only since we have assembled in this Convention, but I have thought about it for years. I have, for the last ten or fifteen years, been impressed with the idea that our Judiciary ought to be elected by the people. When we had the attorneys here and discussed this subject, I listened very attentively, and I found that there was quite a diversity of opinion along that line, some of them thinking that the Judges ought to be elected, and others thinking that they ought to be appointed.

I have consulted a good many of my constituents in regard to this matter, of all parties, my Democratic friends, my Republican friends, and my Prohibition friends, and so far as I have been able to learn, a majority of them felt that they would like for the Judges to be elected by the people. I do not see why they could not be; I do not see why we could not elect them by the people. Some say that it will be too much in politics to have them elected by the people. I cannot see why that should be so. I cannot see for the life of my why we should think that that would interfere with their election. I see there is one part of this paragraph, and that is in reference to "thirty days" the Senate shall be assembled by the Governor—shall be called together—to sanction the appointment that he may make.

Now, it seems to me that that would be unnecessary. Of course, it would not be, if this paragraph was adopted; that is, it would not be unnecessary. But it merely seems to me that if we could have an

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opportunity to elect our judges—and it was grafted in our Constitution that the Judiciary should be elected—it would, in every respect, be more satisfactory to the people.

I therefore offer that as a substitute and move its adoption.

WILLIAM T. SMITHERS: I second the motion.

EDWARD G. BRADFORD: I would ask that the proposed substitute be again read.

CHAIRMAN CARLISLE: The Secretary will read the proposed substitute.

Whereupon the proposed substitute was read by the Secretary as follows:

"The Judges shall be elected by the people for a term of eight years, and if any vacancy shall occur by death or otherwise, the Governor shall appoint and fill the vacancy until the next general election shall be held after the vacancy shall have occurred."

DAVID S. CLARK: I would amend that substitute by making it "ten years", instead of "eight years".

WILLIAM C. SPRUANCE: Mr. Chairman, although that amendment is not exactly what I would like to have, it does embody the main idea of elective Judges by the people. I feel constrained to vote for that amendment just on that ground, and no other. My own idea, would be—of course, I am not pressing this thing upon the Convention, but it is merely to explain my position—and has always been that we should elect our Judges by the people of the State, and the people of the State at large, and that when we had ascertained the number of Judges that we were to have, if there were more than one to be elected, that there should be a limitation of number which a man could vote for, which would inevitably secure a non partisan Bench; if there were five, that no man should vote for more than three; if there were four, that no man should vote for more than two; if there were three, that no man should vote for more than two; if there were two, that no man should vote for more than one; and of course, if there were one elected, a man could vote as he pleased.

That has always been—I won't say always, but that is my judgment about how Judges ought to be chosen. While this amendment does not embody all that, it does put distinctly before the Convention the question, whether or not we will have the Judges elected or appointed. Although I signed this report, still, as in the case of all these reports, I understand that every Member is at liberty to modify his view according to his judgment without any charge of inconsistency. I say that I shall vote for this amendment just upon that idea, that it is a proposition to elect the Judges by the people, although it is not accompanied with that qualification which I think it ought to have.

WOODBURN MARTIN: Mr. Chairman, I am unalterably opposed to an elective Judiciary. This matter was discussed in our Committee very thoroughly, and I think when we took a vote it stood six to two, if I am not mistaken, for an appointive Judiciary.

WILLIAM C. SPRUANCE: It was stronger than that, I think.

WOODBURN MARTIN: Was it stronger than that? Well, that was strong enough. There are many things in this State that make an appointive Judiciary desirable. In the first place, we have such a condition of affairs here that exist probably no where else in the Union. We are a small State, next to the smallest. We have numbers of offices to fill which consequently must take numbers of politicians. If we had an elective Judiciary would the people single out the best man to be elected Judge, or would the office of Judge be filled as other offices are now filled? I myself believe that the man who would be elected Judge would be the man who had the greatest pull politically, the man who had the most influence with a certain class of people at the primaries, the man who would succeed in first getting the nomination, not on account of personal worth, but on account of personal influence that he might exert, and when he did get the nomination for this office, he would call upon his party to support him on party lines and they would do it, and they would elect him, no matter if he was incompetent, no matter if he was unfit for the office.

Our Judiciary is a most important thing, and we ought to keep it as clean and as pure as it is possible to do. We ought to put our Judges under obligations to none, if we can help it, for advancement in any way. There is no man in this State elected to office who is not under obligations to some people for his nomination and for his election. There is no man in this State whom you could run for Judge on the ticket of any party unless he would be under obligations to some people, first for his nomination, then again for his election.

We must remember also that Judges are human, that Judges have feelings like all the rest of us. They have their likes, and they have their prejudices, and we must take that into consideration in discussing these matters. A man who has fought another man for a place, done all he could to defeat him, would not stand as well with that man as someone else who had done all he could to advance him and to build him up. A man could not help but feel more kindly towards the one than towards the other.

Now, we want in this State the best Judiciary that we can get. We want to keep up to the highest point the standard of our Courts of Justice, and in order to do that we must provide such a provision as we believe will bring that about. First, the Governor of this State would not dare, I do not believe, if this section were adopted, to appoint a man from personal preference. He would be compelled to be guided by the man's fitness for the place, because the appointment must have the concurrence of three-fifths of the Senate, and no matter of what political complexion that Senate may be, the appointment must be concurred in by three-fifths of the Senate.

Further than that, there is an idea which I suggested from the beginning, and that is that that concurrence was not to be deferred until the next regular session of the Senate when a man who was appointed could get eminent lawyers to prepare his opinions, when he could give entire satisfaction in the discharge of his duties as Judge, when he could build up a coterie of friends around him to pass upon his confirmation, but the Senate was to pass upon this appointment within thirty days after it was made, so that it would

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pass upon the man's personal worth and merit, and if he was a man who had made a sufficient reputation in the practice of his profession at the bar of this State, the Senate would confirm his appointment. If he was not a man of that character, if he was not a man of that ability, they would not concur in the appointment, but the Governor would be compelled to submit some one else to them for their concurrence.

It seems to me to be the most wise and the most safe provision, and it seems to me that it is all that would be desirable. We must take into consideration that the Governor is the representative of the people in these things and it is really the people through their Governor who appoint this Judiciary, and especially where the concurrence of the Senate is necessary; it is the people all the way through, and neither one nor the other can be arbitrary, for it is their will, the will of the people who elect these men; they are servants, and occupy these positions for this purpose among other duties. It is put in their discretion; to a certain extent, in their hands. We all know that in the case of elective offices there are some men who are elected to positions, even in our own party—there are some men sent to this Legislature here (a most important and responsible place), men of our own party, whom we do not think ought to go there. How much worse it would be to put a man on the Bench for eight or ten years, a man whose skirts might have been smirched with politics, and that the people would have to live under? I hope it will not be done. I hope that the office of Judge will be an appointive office, that we may get the best men possible, and surround them or their appointments with such safeguards as will make it most probable that he or they will make the best servant or servants. Hence I am opposed to the substitute.

EDWARD G. BRADFORD: Mr. Chairman, I desire to submit a very few remarks by way of explanation of the vote which I shall cast upon the question now before this body. I conceive that what we all desire is a Judiciary composed of able and upright Judges. Were the alternative presented to me of having our Judiciary elected by the people on the one side, and appointed by the Governor without any confirmation by the Senate on the other, I should prefer the former, a position that I have always taken, that as between the act of the Governor alone without regard to any requisite requirement of confirmation by the Senate, I should trust the people as against the Governor. I know there is peril in it. I know that the people do not always choose the best officers, and I know that the Governor does not always appoint the best officers. We have had most worthy Governors, and we have had very unworthy Governors, and so far as political influence is concerned, it may operate quite as strongly, if not, indeed, more strongly upon an unworthy Governor who was under certainly very great political obligations to those who have secured his nomination and election.

But the redeeming feature of this report, in my judgment, is that it requires the consent of three-fifths of the Senate.

Now, that to me, is a very great safeguard, and I agree with the gentleman from Seaford (Mr. Martin) when he says that with that Constitutional provision staring a Governor in the face he would be very careful in his selection of members of the Judiciary. He would

know that these men would have to run the gauntlet of three-fifths of the total membership of the Senate, and I believe taking the bald proposition of an election by the people on one side and the appointment by the Governor by and with the advice and consent of three-fifths of all the Members elected to the Senate, that the latter course would be the safer of the two. We are after, as I said before, pure men, upright men and learned men. We cannot afford to do with less.

And with the understanding on my part at least that in the case of an appointment by the Governor it shall be with the advice and consent of three-fifths of the Senate, I feel compelled to vote against the substitute offered.

CHARLES F. RICHARDS: Mr. Chairman, I simply want to say that this question of an elective Judiciary is one that I have given, or at least have endeavored to give very careful consideration, not only since I have been a Member of this Convention, but for some years I have considered the question very seriously. I was frequently thrown in contact with one of the best and ablest lawyers of our State who was a great personal friend of mine. I refer to the late Chief Justice Robinson, who was a strong advocate of the elective Judiciary system, and in the frequent conversations between Judge Robinson and myself, my mind was often called to this question, and I have considered it, thought over it and endeavored to observe the workings of the elective Judiciary system in other parts of the country.

I occupy the same position as the learned gentleman from Christiana Hundred (Mr. Bradford) and I apprehend that it is the earnest desire and purpose of each and every Member of this Convention, in this as well as in other work that devolves upon us, to do simply that which will be best for the interest of all concerned.

Now, I have looked at this question very largely in this light: It has occurred to me, whether it is possible, at all times in an elective system, to keep the question of politics out of the Judiciary. Observing the working of the system in other parts of the country, in other states, whilst we have heard the statement of the gentleman (Mr. Spruance) as regards Pennsylvania, who advocates the system of the State of Pennsylvania, and who, I think, in his statement here said that it gave entire satisfaction, yet, Mr. Chairman, it is a fact that in some parts of Pennsylvania they have had only recently very great trouble, and the system has as it were, brought upon the Judiciary very great—I will not say annoyance, nor exactly shame—but it really has not, in any sense of the word, been at all creditable.

In Delaware County many of us know, and in one of the districts of Pennsylvania, which includes, I think, Cumberland, York and Adams Counties, there has been great trouble in regard to the election of the Judiciary. Only in 1895, I think, there was trouble. In Maryland, there are some people who seem to be entirely satisfied with the system in vogue there. Still, many of the members of the Bar of the State of Maryland say to me to-day, "Don't adopt the elective Judiciary system." I can refer to a member of the Snow Hill Bar, Mr. Purnell, whom I met only a few days ago on the train, when I had a conversation with him in regard to the subject, and that was

his opinion, the Maryland. Only the purpose of Judicial District make that selec

Now, that creation of the man on the Bar. It has been said no trouble in F Chairman, they say to us, a recent appointment was the reason of his position. I think no other man could frequently select a good lawyer those men are afterwards, take position as a law retain their position.

Mr. Chairman, and I oppose around the appointment State Senate, if the Governor disposed to call or some one to which will pre of the people.

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JOHN B. careful consideration. It is a question and has been present. I shall be very unwilling politics. We the Senate, as are engaged.

his opinion, that the elective system was not giving satisfaction in Maryland. Only a few years ago there a Convention was held for the purpose of nominating an Associate Judge in I think, the Fifth Judicial District, and over fifteen hundred ballots were required to make that selection.

Now, that simply means the engendering of political feeling, the creation of that kind of political feeling which follows a successful man on the Bench and which leaves its mark upon the defeated man. It has been said that it works in Pennsylvania, that there has been no trouble in Philadelphia with the elective Judiciary, and yet, Mr. Chairman, there is a difference of opinion on that. Philadelphia lawyers say to us, "Don't you adopt the elective system." They say that a recent appointment following a vacancy on the Bench in Philadelphia was the selection of a very able lawyer, but a lawyer selected by reason of his political activity and his political influence, and that no other man could have been selected; and that whilst good men are frequently selected, in this selection, this gentleman said to me, "He is a good lawyer; a man well equipped for the position"; but when those men are put there, the political influence that follows them afterwards, takes from them what you might term the real eminent position as a lawyer and compels them to go into politics in order to retain their position and bring about their re-election.

Mr. Chairman, I opposed this when it was before the Committee, and I oppose it now. With the protection that this report throws around the appointment, that is, the requiring of three-fifths of the State Senate, we have a safeguard which will prevent the Governor, if the Governor is disposed, if the Chief Executive of the State is disposed to carry out his own views, to appoint a personal friend, or some one to the position who is not fit for it; here is the guard which will prevent such doings and which will protect the Judiciary of the people of the State.

So that as the gentleman from Seaford (Mr. Martin) has said, the people also have indirectly a voice, and a voice which can be expressed without bringing out that bad feeling that a political fight necessarily engenders. We want a good Judiciary. We want to fill the position with men who are in every way capable of filling it, and who are in every way suitable to do the great and the exalted duties that devolve upon Judges.

It does occur to me that this report places us in a position where we may secure just such an appointment, and if left to the people, then we are running the gauntlet of the people voting through and being actuated by political motives and personal prejudices alone. For that reason, Mr. Chairman, I shall vote against this substitute.

JOHN BIGGS: Mr. Chairman, this is a question worthy of very careful consideration, because I consider it a very important one. It is a question that was debated at length in the Convention of 1852 and has been much talked of by our people since that time up to the present. I shall vote against this substitute because I think it would be very unwise that our Judges should be mixed up, I will say, in politics. We can obtain good men in this way, by the confirmation by the Senate, without those men being under political obligations, such as are engendered at primaries and at general elections.

And there are reasons, it occurs to me, why the Judges should not be elected that perhaps do not apply to any other officers. For after all, Judges are but human. Whoever sits upon the Bench to pass upon the rights of yours as to your liberty and your property ought certainly to be as free from all influence and bias, political and otherwise, as it is possible to throw around that man.

I do not see how Judges can be elected without being more or less under political influences. It may be said that they need not take part in these elections, but, Mr. Chairman, if they do not, either by themselves or through their friends, the probabilities are that some less desirable man would be elected; that is, some one who would control the primaries and would control the election. So that I cannot see what is to be gained by electing the Judiciary. But, on the other hand, it seems to me that there is a great deal of risk to be run by it. I am told by people who have lived in states where they do elect judges that it is often attended with very bad and very undesirable effects. We have certainly seen some of it within our sister State of Maryland, for men might recollect within the past few years there was a contest between two men in Cecil County for the office of Judge there. That was certainly a very undesirable thing for those men to be engaged in, one of whom was to pass impartially upon the rights of their fellow men.

Therefore, Mr. Chairman, I shall vote against the substitute as offered to elect these Judges, believing as I do that the appointment by the Governor, to be confirmed by the Senate has a protection thrown around it by having this three-fifths vote. That does not apply to a great many other states, I believe; it is not the rule in the United States Senate, for there I believe a majority of the Senate confirms an appointment made by the President. Here, more is required, so that there is an extraordinary protection; that is to say, a protection beyond a majority in this case in order to secure desirable men.

ROBERT W. DASEY: Mr. Chairman, I only want to say one or two words in regard to this subject, although, probably, it is not necessary for me to say anything. When the idea of changing our Judicial system was first brought about, many of our people were desirous of changing the whole system, that is, that all officers should be elected by the people. But, Sir, it has occurred to me that this matter may be nicely fitted to a story I once heard concerning an old lady in the State of New York who had a deposit in one of the banks there. There was a report sent out by one of the morning papers that the bank was about to close. The old lady went to the bank with her deposit book and rushed in to the paying teller and said, "I have some money on deposit here, I believe?" The paying teller replied, "Yes". The old lady then said, "Can I get it? I see the bank is about to break."

The paying teller said, "Yes; you can have your money if you have your bank book with you." She says, "Can I get it?" The paying teller said again, "Yes." "Well," she says, "if I can get it, I don't want it. If I can't get it, I want it." A number of those people who were desirous of having a change made in the Judiciary system, and people belonging to both parties, a short time ago notified me by letter, and a number called upon me and expressed their opinion in my

presence, which they doubted the. Since there has believe you will principle; that is ment to be confir by some very p: an.

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presence, which opinions they thought might have some effect, that they doubted the propriety of electing the Judiciary in this State. Since there has been talk of confirmation by the Senate, I do not believe you will find very many who do not think that is the best principle; that is, for the Governor to appoint and for such appointment to be confirmed by the Senate. We have very recently been told by some very prominent men that that principle is the best one of all.

JOSHUA A. ELLEGOOD: Mr. Chairman, I did not intend to say a single word in regard to the subject under discussion, but when I took my seat in this Convention I was deeply impressed with the idea that to elect the Judiciary was the right thing to do, and strange to say I am of that opinion still, and that, notwithstanding all I have heard to the contrary. I have listened with a great deal of interest to the arguments in favor of an appointive Judiciary, and yet I have not heard a case cited in any state. I believe it was argued here that in a majority of the states there was an elective judiciary. I have not heard a case cited where they have abandoned the elective system and substituted the appointive system in its stead. If it has so many evils attached to it in those states where the system is an elective one, it seems to me that the people would rise up in a body and abolish that system.

I see nothing in the system of elective judiciary in the City of Philadelphia that should be a bugaboo to us. We find in Philadelphia, although a Republican stronghold, that a Democrat was elevated to the Bench there by from twenty to thirty thousand majority of Republican votes. And they still hold him in that position. Why? For the simple reason that he has been weighed in the balance and not found wanting.

JOHN BIGGS: They divide the Judicial appointments up there. That is to say, they agree the Democrats shall have so many and the Republicans shall have so many so as to keep them out of politics.

JOSHUA A. ELLEGOOD: There is no law to that effect. But I will say right here that if that man, be he Democrat or Republican, did not prove himself to be an honorable upright judge, the people would relegate him to private life in short order.

The people that I more directly represent than I do others perhaps, or to whom I look for advice and counsel in these matters, have said to me, "we want an elective Judiciary, and we want a clause inserted in that Constitution for that purpose." Therefore I shall cast my vote accordingly.

Now it is said that the Governor of this State is better calculated to appoint a Judge than the people themselves. Who is the Governor? He is a servant of the people, made so by the vote of the very people who would elect the Judges to the Bench; and yet you say this one man, a representative of all the people, is better calculated to know what the people want than they would themselves. On the other hand, you say that we throw a safeguard around this by the fact that the Senate of the State of Delaware shall confirm the appointment made by the Governor by a three-fifths majority. Suppose the Governor is a Democrat and the Senate is Republican!

Why, they lock horns at once on the appointment. If such a state of things should exist, there is no doubt but that you will lock horns right at once, and instead of bringing about a state of affairs that is more wholesome, you simply produce in the State of Delaware a condition of things that I never want to see exist.

I believe in throwing the responsibility directly upon the people, and if they by their votes elect a man to the Bench who is not calculated or fitted to sit there, or who is not an honor to the seat, then you cannot point your finger at the Governor and say, "you are the man who did this!", but you point your finger at the people and say, "This is your doings, and you must suffer the consequences."

This elective Judiciary system has been talked about for years and years, and there is not a gentleman in this Convention but what has heard the appointive power condemned to the fullest degree for the simple reason that the Judges that have been appointed by the Governors of this State have not measured up to the requirements demanded by the People of the State.

So, in conclusion, I shall vote for the substitute offered by the gentleman from Kenton Hundred (Mr. Clark). But still, I do not believe that the substitute entirely covers the ground, because I do not believe it goes far enough; it is not far reaching enough. Perhaps the phraseology does not explain just what we want in that section; yet it is a step in the right direction, and I shall vote for the substitute cheerfully.

EDWARD G. BRADFORD: I would like to ask the gentleman (Mr. Ellegood) just one question, and that is, whether he has known of any instance, and if so, what it was, or how many instances in which the President being of one political faith and the Senate being of another political faith and where there has been any rejection of the Presidential appointee upon political grounds?

JOSHUA A. ELLEGOOD: That is in the United States, and is governed by the United States Senate; but I can cite you hundreds of cases where a single Senate will hold up an appointment; and if I understand rightly, there is a batch now of one hundred appointments which have been made by President Cleveland and which are being held up in the Senate for the incoming administration.

WOODBURN MARTIN: Of the Judiciary?

JOSHUA A. ELLEGOOD: I do not say in the Judiciary. We are talking about the appointive power.

WILSON T. CAVENDER: Mr. Chairman, I do not rise to prolong this debate. I presume the Committee of the Whole is prepared and ready to vote upon this question; but as a Member of the Standing Committee which made this report, I wish to say that I have contemplated this proposition of dragging our Judiciary into the mire of politics with a great deal of dread. I do not suppose that it is necessary for anyone to discuss at all the fact of whether or no the making of our Judiciary elective would have a tendency to drag them into the mire of politics. As has been said here the men who are running for the position of Judge, no matter to which party they may

belong, are very much in my mind about observation of

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EDWARD statement made to the effect that it is a gross error for an gentleman that I have mentioned that I have heard

Mr. Chairman three wide spread by our tion, our Judiciary is supreme and from it; none mind have gone years, for two further and in special case liberality—a

I can continue which men were considering removing the no other reality to the politics as a fact ality to the desired to be

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WILLIAM continue this speech in favor as good a speech made upon favor; but I is just simple

belong, are very much alike anyhow, and if I had had any doubt in my mind about this, I should have had all doubt removed by an observation of a publication what I saw but a little while ago.

In some of our states you know there is a law requiring nominees of parties to state under oath their contributions to the political party to which they belong, and I remember very distinctly of seeing, in the State of New York, that one of the judges had been assessed for political purposes, when he was nominated, to the amount of twenty thousand dollars. It was simply horrifying to me to think that a man, a nominee of a party, to fill such a position as that of a judge, should be assessed to that extent. Therefore I say, if I had entertained any doubt previous to that, that removes all doubt in my mind.

I shall therefore vote in accordance with the proposition reported by this Committee, and shall do so most heartily.

EDWARD D. HEARNE: Mr. Chairman, I was surprised at the statement made by the gentleman from Cedar Creek, (Mr. Ellegood) to the effect that the people in his section of the county were so clamorous for an elective Judiciary. I tell you the truth when I say that the gentleman from Cedar Creek (Mr. Ellegood) is the only man that I have met in Sussex County since the assembling of this Convention that is favorable to an elective Judiciary, and the first man I have heard speak of it on that line.

Mr. Chairman, the report of the Committee has made two or three wide strides along the line of liberality over and what is provided by our present Constitution, for, under our present Constitution, our Judiciary are appointed by the Governor for life. His will is supreme and conclusive in the appointment. We have no appeal from it; none whatever. This Committee being of a liberal turn of mind have gone to the extent of appointing for a limited number of years, for twelve years, and they do not stop there; but they go still further and say that the appointment shall be confirmed by the Senate in special session. All of that is a wide stride in the direction of liberality—a very wide stride.

I can conceive that in the first instance, under our first Constitution which made the Judiciary appointive for life, that those gentlemen were controlled by the sole desire in making Judges appointive of removing the Judiciary out of the mire of politics. I can conceive of no other reason. And I for one favor keeping it safe and out of politics as far as possible, and, at the same time, with as great liberality to the wishes of the people as is consistent with the object desired to be attained.

I shall therefore vote against the proposed amendment of the gentleman from Kenton Hundred (Mr. Clark).

WILLIAM C. SPRUANCE: Mr. Chairman, I do not rise to continue this debate. I could make, I want to say, a pretty good speech in favor of this amendment, and although it may not be quite as good a speech as my friend from Cedar Creek (Mr. Ellegood) has made upon this subject, I could make a pretty long speech in its favor; but I am not going to inflict that upon you. What I rise for is just simply to say that since this amendment was offered I have

been able to lay my hands upon the memoranda I made of the examination of the Constitutions of the different states upon this subject, which examination I made just ten years ago, in 1887; and I tabulated the different states in respect to that question. I will only read you a summary.

There were then thirty-eight states whose constitutions I examined, and I found that the judges were elected by the people in twenty-six states, that they were appointed by the Governor and confirmed by the Senate, or Executive Council (for in some states they have Executive Councils) in seven states, and they were chosen by the legislature in four states; and they were appointed by the Governor alone in but one State, and that was in the State of Delaware.

JOSHUA A. ELLEGOOD: Can you state a case where they went from an elective back to an appointive system?

WILLIAM C. SPRUANCE: Not a one. I never heard of such a thing; and although it is rather unsafe for a man to talk about what he cannot prove by facts, I venture to say that of the seven states, since they have been admitted to the Union, five have changed over, and upon examination you will find every one of them have got their judges elective; and the probability is that those states in which they have held Conventions within the last ten years since I made that examination, have adopted the elective system; you will find that some of them, at least, have adopted that system. But I never heard of a State that went from an elective system to any other.

I am not going to protract this debate. Of course, there is more or less difference of testimony as to how this thing has worked in other states. But I plant myself upon this: I do not believe it is true that the system of an elective Judiciary has worked badly in other states because of the universality and the persistency with which they have held onto that system. Then again while I know there are some people from the state where they have an elective judiciary who are a little sore upon the subject, yet a majority of the most capable gentlemen that I have been thrown in contact with from other states, their testimony is overwhelmingly in favor of an elective judiciary. And, that, so far as my knowledge of the adjoining states is concerned it is not very extensive or very active, but so far as it goes, the tendency all is in favor of the elective system.

There has been some allusion made to Pennsylvania, as to how the elective system operates there. We heard that venerable gentleman who came down here the other day to instruct us—and I will say he came down here under absolutely proper circumstances, at our invitation, and I do not know where we could have found a man of larger experience and who was more absolutely disinterested in the subject for he is not engaged in the practice of law even now, his life of activity having passed, but he is a man of large experience (and he occupied a position in the Constitutional Convention of Pennsylvania), and a man of very large experience in public life; and I do not know anybody whom I would ask with more confidence for a correct answer as to the working of the system in Pennsylvania than him, and you know what his testimony is in regard to it. We

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do know of some instances in Pennsylvania in which this thing has worked well. Gentlemen talk about the experience in Delaware County, Pennsylvania. Let me say I know something about that man who is Judge there, and he is no slouch. He is a man who practiced law for many years in Philadelphia with great success. I won't allude to the weaknesses and defects, for there are some in his character; but he is an honorable man, and he belongs to an honorable family, and has three or four brothers who are in different occupations in different states, and who have held their positions by the very force and strength of their character; and there are one or two of his brothers who are living to this day. He made and held a large practice in the City of Philadelphia. Then he moved to Delaware County. He is an honorable man and an exceedingly able man. He is supposed to have for his friends certain classes in the community that some do not approve; for instance, the gentlemen who addressed us yesterday afternoon (local option people) do not approve of them. He has more friends, probably, among the liquor people than among the prohibition people. Notwithstanding that, he has very strong support and backing in that community which is a highly moral community; and notwithstanding what may be said against him, he receives the support of the majority of the people of that Judicial District, and I am not prepared to say that he is one unworthy of it either. He is, at least, a man who had the ability to make and hold a large practice at the bar, and we have known some men who have been appointed to the position of judge who have not had that capacity. I think I have said all I have got to say upon that subject.

I will say just one other thing. There was a very remarkable instance of the operation of the elective system in Philadelphia some years ago. There was a judge upon the bench, and a Republican judge, in this greatly Republican State of Pennsylvania, and in the City of Philadelphia, who was an honest man, who was an able man, and who was a learned lawyer, but he was so uncomfortable and cantankerous that he made himself a nuisance to the bar and they determined that they would rid themselves of him, and when the time for nomination came around—but first of all, just before that there was a vacancy on the bench in Philadelphia, and the Governor, at the present time, who is a Democrat, appointed a young lawyer named Gordon to fill this vacancy. He proved himself very capable in the few months that elapsed before the time for nomination and election to fill this position came around.

This Republican judge was put in nomination by his party, and the lawyers in Philadelphia, irrespective of party, to the number of about, as I recollect, three hundred and fifty, signed what the sailors would call a "round robin", in which they protested against the election of that man as a judge; and they went in and they elected Gordon, and Gordon has been a judge ever since, and he has proved perfectly acceptable to the people of Philadelphia.

The trouble is that where the people do not stand out for a good, strong pure minded man, regardless of party, then election by the people is a dangerous thing; I mean, where the bar has not got the moral strength to stand for such a man, regardless of party, it is a dangerous thing, because the people naturally look to the bar for help,

to a certain extent (and very properly), upon that subject. If our Bar are such a set of men that they will not stand for good Judges irrespective of parties, then God save you if you have an elective system. But if they would prove themselves to have as much courage as the lawyers of Philadelphia had, then I do not think there is any danger but what you would get good results from it.

I never would consent to give my support in nomination to any man in any party whom I did not think was morally and intellectually qualified for the Bench, and I would have a number of others of my associates who would not entertain such an opinion. All it needs is a little nerve and courage at the right time, and every member at the Bar would have a proper influence in this matter.

DAVID S. CLARK: Mr. Chairman, I just want to say one word. There has been much stress laid upon the bugaboo of dragging the Courts into the mire of politics. I would like to ask if the election of the Judges could possibly drag our Courts deeper into the mire of politics than they are now.

WILSON T. CAVENDER: Yes; it could.

WILLIAM T. SMITHERS: Mr. Chairman, is it not a well known fact that in a recent case, and in all recent cases of that kind, our Courts have been absolutely partisan? Now, can the elective system drag them any deeper in the mire of politics than they have been dragged in under this appointive system? As a matter of fact, the elective system has worked well in other states, no matter what has been said to the contrary.

I have had myself some little experience with that system and have associated in the past years with lawyers who have practiced for years under that system, and so far as I know every man has commended it. I am safe in saying as regards the city of Philadelphia, and I think also as regards the State of Pennsylvania, that no member of the Bar there would think for a moment of returning to the other system.

I am in favor of this amendment, and have been in favor of it all the time; and the people I have talked with, whom I count as my constituents, have said to me, "this is what we want." I believe it to be what we want. My idea is that we can trust the people. If you will place the responsibility upon them and they come to recognize it as a responsibility, I believe they will not go far wrong.

I shall therefore vote for this amendment.

DAVID S. CLARK: Mr. Chairman, I am very much interested in this matter, and I want to say right here that we would like to have our Judiciary elected by the people; not by any particular party, but by the whole of the people. If the Governor appoints, and three-fifths of the Senate is of the same political faith as the Governor is, then we have a Judge, whoever he may be, appointed by one party and the other party or parties as the case may be, in which appointment the people at large have no opportunity of saying who their Judge shall be.

Now, it has been said that the great object of having the Judiciary appointive was to keep it out of politics. I am frank to confess that I knew nothing about politics until about eight or ten years ago. I

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always went to the polls and voted and attended to my own business at home; but after I was elected to the Legislature and being thrown in company with politicians I somewhat imbibed the political spirit and then naturally looked after the political interests. I want to say here (and I believe I say it truthfully) that I do not believe there is a gentleman on this floor, whatever his political faith may be, but what would agree with what I say, that in our present system of appointive Judiciary, as it has been, there has been entirely too much politics mixed with it. If there is a gentleman here who believes to the contrary, let him stand up and I will sit down.

EZEKIEL W. COOPER: How do you mean? Mr. Chairman, I would like to understand what he means, and I stand up simply in defense of the State of Delaware if the gentlemen means what I construe his meaning to be.

DAVID S. CLARK: The gentleman can stand up in defense of the Judiciary, and defend it, of course, but I ask if he thinks it has been as pure as it ought to be? The question I put is this: If we have had in the last ten years a Judiciary that has been clean of politics, or political trickeries? If there is a gentleman here who believes that, let him stand upon his feet.

The following gentlemen then stood up: Messrs. Cooper, Dasey, Pratt, Cavender, Martin, Hearne, Horsey, Richards, Burris, Cooch and others.

WILSON T. CAVENDER: Now as we have stood up, let the gentleman make his promise good by sitting down.

DAVID S. CLARK: Six years ago I was called to Wilmington where there was an election case to be tried. After I got up there a gentleman remarked to me, "How do you think this case will go?" I says, "Why, it will go on one side, just like the handle of a jug." He says, "Why do you think that?" I says, "It is not necessary for me to explain to you why I think that; I judge from past experience." And so it did go, just as I predicted. And there are other cases that have come before our Courts, and the decisions of those Courts in those cases have not been clear of politics. There is no question about that.

So I say, Mr. Chairman, give us an elective Judiciary. It is said that a wise man changes his mind but a fool never. I feel pretty sure that we have quite a number of wise gentlemen on the floor of this Convention. I also know that when we have once publicly expressed our opinion, why it is hard for us to get away from it, harder than it is if we had not expressed such opinion. There are quite a number of gentlemen here who have not expressed an opinion in regard to this question of elective Judiciary.

I move, Sir, that those gentlemen have time to consider this matter before this vote is taken, and that we now rise, report progress and ask leave to sit again.

ROBERT W. DASEY: I second the motion.

JOHN BIGGS: Mr. Chairman, we certainly must make some progress in these matters. We have talked on this one question all morning, and I hope the Members are ready to vote on it.

WILSON T. CAVENDER: I call for the yeas and nays.

WILLIAM SAULSBURY: Mr. Chairman, before the question is put, I would like to say just one word. On general principles I believe that is in the line of right policy of entrusting to the people the direct choice of their public servants. I recognize that under certain conditions that we now have the election of a Judiciary possibly might not be desirable. I have not the grave fears of results from an elective Judiciary that a great many Members of the Convention seem to have. I confess that I feel some doubt as to the practical working of the provision reported from the Committee requiring a confirmation by three-fifths of the Senate. I am not clear in the opinion that it is well to mix the State Senate up with appointments, or that much good would come from that provision.

I will say, however, on the question that is about to be voted on now, I do not feel clear on the proposition; but if a vote is taken now, I, under the circumstances, shall vote to sustain the report made from the Committee, of course, reserving the right to change my opinion if any question comes up later in Convention.

JOHN BIGGS: Question on the motion.

CHAIRMAN CARLISLE: The question is on the motion that the Committee rise, report progress, and ask leave to sit again.

The Secretary will please call the roll.

Whereupon the Secretary called the roll with the following result:

Yeas: Messrs. Cannon, Clark, Ellegood, Saulsbury and Smithers.

Nays: Messrs. Bradford, Biggs, Burris, Carlisle, Cavender, Cooper, Dasey, Donahoe, Gilchrist, Hearne, Horsey, Martin, Moore, Pratt, Richards, Sapp, Spruance and Wright.

Absent: Messrs. Cooch, Evans, Harman, Hering, Johnson, Murray and Orr.

Whereupon the Chair announced the result of the vote as follows:

Yeas, 5; Nays, 18. And declared the motion lost.

WOODBURN MARTIN: I call for the yeas and nays on the substitute as offered.

CHAIRMAN CARLISLE: The question before the Committee is the adoption of the substitute offered by the gentleman from Kenton Hundred (Mr. Clark) in lieu of the section as originally reported.

The Secretary will please call the roll.

Whereupon the Secretary called the roll with the following result.

Yeas: Messrs. Cannon, Carlisle, Clark, Ellegood, Gilchrist, Smithers, and Spruance.

Nays: Messrs. Bradford, Biggs, Burris, Cavender, Cooper, Dasey, Donahoe, Hearne, Horsey, Martin, Moore, Pratt, Richards, Saulsbury, Sapp and Wright.

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Whereupon the Chair announced the result of the vote as follows:

Yeas, 7; Nays, 16. And declared the motion lost.

EDWARD G. BRADFORD: Mr. Chairman, I would move to amend section "c" between the word "years" and the word "and" in the fifth line of the newspaper copy, the words, "if they so long behave themselves well".

WILLIAM SAULSBURY: I second the motion.

EDWARD G. BRADFORD: So that the sentence down to that point would read, "the Judges shall be appointed by the Governor by and with the consent of three-fifths of all the Members elected to the Senate, for the term of twelve years if they so long behave themselves well." This statement is found in nearly every Constitution that you can lay your hand on. It is simply to guard against an unfit man continuing in office; that is to say, that they are to continue and hold office for a term of twelve years if they so long behave themselves well.

JOHN BIGGS: Question on the motion.

Motion put and carried.

CHAIRMAN CARLISLE: The amendment as offered by Mr. Bradford is therefore adopted.

JOSHUA A. ELLEGOOD: Mr. Chairman, I move to amend paragraph "c" by striking out in the fifth line the word "twelve" and inserting in lieu thereof the word "ten".

WILLIAM A. CANNON: I second the motion.

WOODBURN MARTIN: Mr. Chairman, I move that the Committee do now rise, report progress, and ask leave to sit again.

Here is an amendment offered to reduce this term of years from twelve to ten. Every Member of our Committee knows what a hard time we had to get it down to twelve years, and now an attempt is made to cut it down to ten years.

I will withdraw my motion for the Committee to rise.

JOSHUA A. ELLEGOOD: Mr. Chairman, I will withdraw my amendment for the present if you are not going to adopt the section now.

ROBERT W. DASEY: I think it is very desirable to continue with this matter now. This question is under way, and the Judicial stream is pretty well crossed, and if we are not very careful, we will lose steerage way, fall back and lose what we have already gained, and the first thing we know we will be on the shoals.

WOODBURN MARTIN: Mr. Chairman, I withdrew my motion.

WILLIAM C. SPRUANCE: I call for the question on the section as amended. I will ask the Secretary to read the section as amended.

CHAIRMAN CARLISLE: The Secretary will read the section as amended.

Whereupon the Secretary read the section "c" as amended, as follows:

"The Judges shall be appointed by the Governor by and with the consent of three-fifths of all the Members elected to the Senate, for the term of twelve years, if they so long behave themselves well, and if any vacancy shall occur by expiration of term or otherwise at a time when the Senate shall not be in session the Governor shall within thirty days after the happening of any such vacancy convene the Senate for the purpose of confirming his appointment to the said vacancy and such other Executive business as may come before it for action.

EDWARD G. BRADFORD: Question on the motion.

DAVID S. CLARK: I call for the yeas and nays.

CHAIRMAN CARLISLE: The Secretary will please call the roll.

Whereupon the Secretary called the roll with the following result:

Yeas: Messrs. Bradford, Biggs, Burris, Carlisle, Cooch, Cooper, Dasey, Donahoe, Gilchrist, Hearne, Martin, Moore, Pratt, Richards, Saulsbury, Sapp, Spruance and Wright.

Nays: Messrs. Cannon, Clark, Ellegood, and Smithers.

Absent: Messrs. Cavender, Evans, Harman, Horsey, Hering, Johnson, Murray, and Orr.

Whereupon the Chair announced the result of the vote as follows:

Yeas, 18; Nays, 4. And declared the motion carried.

CHAIRMAN CARLISLE: Section "c" is therefore adopted as amended.

JOSHUA A. ELLEGOOD: Mr. Chairman, I move that the Committee of the Whole, do now rise, report progress and ask leave to sit again.

EDWARD G. BRADFORD: I second the motion.

Whereupon Mr. Carlisle, as Chairman of the Committee of the Whole, was instructed to report to the Convention that they had had under consideration the first report of the Committee on the Judiciary, to report progress to the Convention and ask leave to sit again.

Motion put and carried.

Whereupon the Committee of the Whole (at 12.38 p. m.) then rose and President Biggs took the Chair.

PARIS T. CARLISLE, JR.: Mr. President, as Chairman of the Committee of the Whole, I have been instructed to report that they have had under consideration the first report of the Committee on the Judiciary, to report progress and to ask leave of the Convention for the Committee of the Whole to sit again.

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WOODBURN MARTIN: Mr. President, I move that the report be accepted and the Committee be granted leave to sit again.

ROBERT W. DASEY: I second the motion.

Motion put and carried.

WOODBURN MARTIN: Mr. President, I move that the Convention do now adjourn until 2.30 o'clock this afternoon.

ROBERT W. DASEY: I second the motion.

Motion put and carried.

Whereupon the Convention (at 12.40 p. m.) adjourned until 2.30 o'clock p. m. same day.

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AFTERNOON SESSION.

Dover, Del., February 9th, 1897. 2.30 o'clock p. m.

Pursuant to adjournment, the Convention to revise, alter or amend the Constitution of the State of Delaware, met at 2.30 o'clock p. m.

Convention called to order by President Biggs.

PRESIDENT BIGGS: Reports from Standing Committees are in order.

There being none, reports from Special Committees are next in order.

There being none, presentation of petitions, memorials etc., are next in order.

There being none, miscellaneous business is in order.

WILLIAM C. SPRUANCE: Mr. President, I move that the Convention do now go into Committee of the Whole for the purpose of further considering the first report of the Committee on the Judiciary.

CHARLES F. RICHARDS: I second the motion.

Motion put and carried.

Whereupon the President, (at 2.40 p. m.) vacated the Chair and called Mr. Carlisle to the same.

The Members of the Convention then proceeded as a Committee of the Whole to consider the first report made by the Committee on the Judiciary.

WILLIAM C. SPRUANCE: Mr. Chairman, I would ask that the Secretary read paragraph "d" section.....

CHAIRMAN CARLISLE: The Secretary will read paragraph "d" of the report.

Whereupon the Secretary read paragraph "d" of the report as follows:

"Section Any Judge shall have the right to resign his office after reaching the age of seventy years and thereafter receive the full salary attached to the office until the end of the term for which

CHAIRMAN GILCHRIST: The amendment therefore prevails.

WILLIAM C. SPRUANCE: I move the adoption of section 28 as amended.

EDWARD G. BRADFORD: I second the motion.

Motion put and carried.

CHAIRMAN GILCHRIST: Section 28 as amended is therefore adopted.

WILLIAM C. SPRUANCE: Mr. Chairman, in coming back over our work, the first thing that I observe that is undisposed of is the last three lines of section 3, which reads as follows:

"The said appointments shall be such, that no more than three of the said six Judges, in office at the same time, shall have been appointed from the same political party".

I move the adoption of those lines.

DAVID S. CLARK: I second the motion.

CHAIRMAN GILCHRIST: The Secretary informs me that there is an amendment to these three lines which has not been disposed of.

EDWARD G. BRADFORD: What is the amendment?

CHAIRMAN GILCHRIST: The Secretary will please read the amendment.

Whereupon the Secretary read the amendment as follows:

Strike out of the fourteenth line the word "six" and insert in lieu thereof the word "law"; so that it would read, "three of the said law Judges."

EDWARD G. BRADFORD: Just say the "five" law Judges.

WOODBURN MARTIN: I will accept the amendment.

JOHN BIGGS: As I understand the amendment as suggested by the Member from Christiana Hundred (Mr. Bradford) and as accepted by the Member from Seaford Hundred (Mr. Martin) it is to strike out the word "six" and substitute in lieu thereof the words "five law"; so that the second sentence would read, "The said appointments shall be such, that no more than three of the said five law Judges, in office at the same time, shall have been appointed from the same political party".

EDWARD D. HEARNE: That is the amendment now before the Committee?

CHAIRMAN GILCHRIST: Yes.

WILLIAM C. SPRUANCE: Mr. Chairman, it has been extremely gratifying to me to find prevalent in this Convention the very general feeling that we ought to do something by which we would make our Bench non-partisan, or if it be a better word, bi-partisan; that is, that we should not have them all of the same political party. I have in mind an old maxim that "equality is equity". If there be anything in this idea, let us go the whole figure; let us come right up to the mark. Why confine this matter of non-partisanship to five of our six judges? Why not let it run clear through? You will observe that the Chancellor is left out here, and that there will be no restriction in

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regard to his appointment; and yet under the provision which is proposed to be added in regard to the trial of election cases, while he does not sit below, yet he sits as a Judge on appeals, and surely if there is any class of cases in which the Judges should be as near as possible equally divided, it ought to be upon trial of election cases. If you leave this thing there as it is, you just throw out the whole principle; and the principle runs right straight through, that no more than three of your six Judges shall have been chosen from the same political party; not that a man may change his opinion after he is appointed—that of course we cannot control—that is all right; but they shall not be chosen from the same political party; not that the other party shall be chosen from any other party designating it, but that no more than three shall have been chosen from that particular party.

That seems to me to be fair, reasonable and equitable. It may not appear to be entirely necessary now to some of our friends on the other side of the chamber, but it would appear, I am quite sure, to be eminently just to our friends who sit in the rear of this side of the chamber if they should happen to be in the saddle.

DAVID S. CLARK: That is what is the matter.

WILLIAM C. SPRUANCE: If they were in the saddle, I should like certainly equality. We are not making a Constitution for today or for tomorrow. We are making it for all time. This may last probably for a generation, and it may be the last Constitution for two generations. We do not know in the upheaval of time how things may go. There may be then gentlemen who differ very very radically, and who may be suffering then as we are now.

Don't you think, Mr. Chairman, it would be fair all around if we just made this thing equal—not to consider for an instant who is to be the man who should name the first batch of these, because life is very uncertain. All of the gentlemen who shall be appointed by the present Governor who will have these appointments, will surely not live their terms out. It is unheard of, that six men appointed for a given time should all live twelve years. They won't do it. There will be gaps here and there and the chances are if they are men past middle life who are appointed, there will be big gaps in their number. So we had better look out unless this thing comes back upon us. I am as much satisfied in that in the future as you are in the present.

JOHN BIGGS: Maybe more so.

WILLIAM C. SPRUANCE: As the gentleman says, maybe more so. I do not know what is coming. I think this is the time for us to be even and square all around in this thing; so let us stick to the report of this Convention which was so impartially considered and had the approval and countenance and signatures of all our friends on the other side of the chamber who differed with us upon other subjects, except Mr. Harman. I do think we would be doing ourselves great honor all around, as we have here gentlemen who are able to look beyond the present circumstances and the present opportunities to the future, and the exigencies that may come with the years that may come, and that we would be more content and happy and safe if we applied the principle of equality as near as we might by the adoption of this.

JOHN BIGGS: The maxim which has been suggested by the gentleman from Wilmington (Mr. Spruance) that "equality is equity", is a very old one, but a very good one, and I am not here to dispute it or to gainsay it.

But I would like to call the Members' attention to the fact that the Superior Court, the Court of General Sessions and the Court of Oyer and Terminer are to be composed of five Judges and that those five Judges cannot be divided equally. It is a physical impossibility, and inasmuch as three of the five must come from one party or the other, it being a physical impossibility to make one man come from both parties, unless the Member from Wilmington (Mr. Spruance) can accomplish some anatomical feat that I have not yet learned of, it must necessarily follow that three out of the five must come from one political party or the other. And therefore I take it it is necessary, in order to carry out this equality in equity and the principle of equality in equity, and in order to show that generosity of which we have all been disposed to tender and carry out, that the offer of the amendment made by the Member from Seaford Hundred (Mr. Martin) would be carried out by this Committee.

WOODBURN MARTIN: I only have a word to say in this connection, Mr. Chairman, and that is this: My idea in offering this amendment coincided exactly with those expressed by my friend from Wilmington (Mr. Biggs) who has just taken his seat. I cannot see, out of five Judges composing a Court, how that Court could be made non-partisan unless you would get two from the Democratic Party and two from the Republican Party and one who was not anything on the face of the earth, and that would be almost impossible to do under existing circumstances.

EDWARD G. BRADFORD: The Single Taxers.

ROBERT W. DASEY: And Prohibitionists.

WOODBURN MARTIN: There is no danger of that. I have modified my views somewhat in offering this amendment. My first inclination was to substitute the word "four" for the word "three", "that no more than four of the six should come from the same political party"; but I thought I would do better than that, and knowing that our friends on the other side who are in a minority would remind us of that fact and tell us that we ought to be as charitable toward them as we could, and do as much for them as possible, I feel that I am disposed to do that. I do not think the Chancellor ought to be taken into consideration in this matter, but whatever party is in power should be allowed to appoint the Chancellor. He can be confirmed by three-fifths of the Senate.

The office of the Chancellor is a peculiar one. It is peculiar to himself. He has nothing to do with whatever but Chancery jurisdiction, except to sit in the Court of Errors and Appeals. This Court could be so arranged by whatever party was in power, if we should have a Bench divided three to three, that all of one party might hear the election cases in one case, and all of the other party might hear them upon appeal or writ of error. But I do not imagine for one instant that that thing will be done.

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And the reason I think it is desirable to have the minority party represented on our Bench is that they may bring about a fuller and freer discussion of these matters that come before them and that they may make fair and impartial decisions on those questions.

I think that this is the best that can be done. I think it is all that the people expect of us. It will not be a hardship on the people. It is hardly fair to presume that officers who are elected by the people will appoint certain officers to places who are not in accord with the wishes of the people as expressed at the polls. It is hardly to be expected that Democrats are elected to office to appoint Republican Judges, or that Republicans are elected to office to appoint Democrats; but they are expected to appoint those of their same political opinions.

Therefore, I would leave this office of Chancellor out of the question entirely and let that party which is in power, when a vacancy occurs, have the appointing of that office.

As to the Superior Court, of course, we can do nothing more than to have three from one party and two from the other. There are six Judges in our Superior Court and Court of Chancery, besides a Federal Judge which is usually given to this State, that is, to this district. If you want to make them even in the State, you cannot do any more than to give three of these officers to one party and four to the other, let it be which it may.

EDWARD G. BRADFORD: I shall state, Mr. Chairman, very frankly, the view I entertain about this matter. I understand that the report of the Committee, insofar as it provides that no more than three of the said six Judges shall have been appointed from one political party, is proposed to be amended by the insertion of "three of the said five law Judges".

I confess that to me it makes very little difference whether the report as originally made be adopted or this amendment be adopted, for as I regard the matter, this is not an act of the legislature which we are passing which may be in force for six months or a year or two years and then be repealed, but if this Constitution is adopted it may be in existence for fifty years and during that time in all human probability you will have, with the revolving years, political changes, and the situation as you find it today won't be the same as you may find it five years hence, or as you may find it ten years hence, or as you may find it fifteen years hence, or twenty-five years hence.

I think that in the course of time all that matter will adjust itself. Therefore, it makes very little difference to me as I say whether the three and three proposition stands, or the three of the five law Judges proposition stands. Of course, I would not be doing myself justice were I not to express my preference for a certain provision. That would naturally be my preference, because that would be the realization and the most complete in respect of what I should consider a non-partisan Bench. But, at the same time, I, for one, while I should be very much pleased indeed if some gentleman would withdraw that amendment and vote for the original bill—and I will say right here I do not propose to vote against that amendment, if it is pressed.

My views about this Constitution may have been rather peculiar from the start. From the very beginning I was in favor, as you gentlemen know, of a strictly non-partisan Convention, evenly divided, and did all within my power to bring about that result in New Castle County; and that was upon the ground that I had sufficient faith that when the business men were put up on each side they would not meet together as pot-house politicians and dispose of matters on that plane, but that they would discuss matters seriously as being the right thing, and I was perfectly willing to take my chances with such a Convention, because I thought they would do the right thing in the long run, and while there might be differences of opinion, there would be mutual concessions on both sides so that some instrument might emanate from this body which being adopted would be a credit to the State regardless of the political affiliations or opinions of the members of this or that particular party.

We have never had, since I have been a Member of this Convention, a line drawn upon any such subject, and I don't want to see a line drawn upon any such subject to the end of this Convention. I do not want to see it. I want to see this Convention harmonious from beginning to end.

Therefore, I say, that while it is against my natural desire and against my own notion of what would be the best thing to do, namely, an exactly equal division, I do not feel disposed, if that amendment is pressed, to antagonize it.

Having expressed these views, I do not know what more I can say upon the subject. After all, I think the matter will adjust itself in no very long time one way or the other. Things are bound to change one way or the other.

ANDREW L. JOHNSON: Mr. Chairman, as between the two propositions I have very little choice, but I am thoroughly opposed to compelling a Governor of this State to appoint any man on account of his political affiliations.

It is well known that our Judiciary at the present time have been appointed from one political party. That probably is not the best course to pursue, and I would be very glad to see the Governor of this State appoint well equipped men from another party. I would hail the day when it was done and would be glad to have it; but to vote to compel a Governor to appoint a man on account of his political affiliation, you are simply saying, 'You are put upon the Bench to look out for our party interests whenever they come up'. There is no other construction that you can put upon it. There can be no other, in my own mind, established, and that man is expected, whenever a political question arises, before that Court to take care of his own party rights or privileges.

For those reasons I am opposed to putting in the Constitution any provision that compels certain partisan appointments of the Judiciary.

JOSHUA A. ELLEGOOD: Mr. Chairman, when I was nominated and elected it was upon a non-partisan or bi-partisan ticket, five Democrats and five Republicans, and when I left my home and came to this Convention, I tried to leave, for the time being, politics behind me.

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Like the gentleman from Christiana Hundred (Mr. Bradford) I never want to see lines drawn here on questions or where we shall divide according to political opinions.

It seems to me in framing the organic law of this State, a law that may stand for fifty years as the basis for all future law until this Constitution is amended or made anew, it should not bear the finger marks of men who are of different party lines. If it is right that the Judges of this State should be divided equally politically, then let us make it so; if it is in the interest of public justice and the people of this State are more apt, under a system of that kind, to have justice done than under any other, then I am willing to make it so. But, on the other hand, if we consider that the Chancellor is not a law Judge, and that he will not be called in question to sit in political cases outside of the Court of Errors and Appeals, then let us vote for the amendment as it now stands.

As the gentleman from Christiana Hundred (Mr. Bradford) has well said, there will come a time in the history of all political parties when they must surrender their power to their opponents, and in times like that it is altogether in whose ox is being gored.

So I am like the gentleman (Mr. Bradford), I am willing to vote for either proposition if that is best, but if you take the Chancellor away and then you want to make three of the law Judges of one political party and two of another, I am perfectly willing to support that.

With these few words, I believe in all my future actions in this Convention that I shall cast my vote for what I consider to be the best interest of the people of Delaware without any reference whatever to my political opinion.

EDWARD D. HEARNE: Mr. Chairman, we are now living under the third Constitution of the State of Delaware, and this proposed amendment, or portion of the Judiciary report, I believe is the first reference that has ever been made to politics with respect to the appointment by the Constitution of our Judiciary. In none of the other Constitutions will you find any reference to it whatever.

I am a young man, but I have lived through periods in the State of Delaware when our State Judiciary was solidly composed of members of that political party which was in opposition to the party from which the present Judiciary was appointed. I have seen a complete change, and I, for one, in my observations of the workings of our Courts, have no fault to find with any decision that has ever been made by either Court, whether that was Republican or Democrat, on the score of politics. I cannot for the life of me see any just substantial legal reason why we should make any reference to the politics of our Judiciary. I say, I cannot see why we should do it.

ROBERT W. DASEY: This matter is like a great many others. The people ask for it and after they get it they don't appreciate it. It has been stated that there was not satisfaction given, no matter how able the Judges might be, when they were all from one political party. The time has been in the history of this State when they have all been from one political party and also the time when they have

been all from another political party, which is the case now. I think it would give more satisfaction to the people if the Judges were not all from the same political party. That is my opinion.

I want to state that I am as much opposed to anything of a partisan nature which tends to enter into our Judicial deliberations, as any gentleman on this floor. I want to be honest, and I want to be sincere. As the gentleman from Georgetown (Mr. Hearne) has said, this is the first time there has ever been offered a section of this nature to be entered into our Constitution. We might go further than is stated here. If we say six, we might say seven, because there is now a vacancy on the Federal Bench to be filled by the party represented by the gentlemen on the other side of this House; and that vacancy will surely be filled from that political party.

WILLIAM C. SPRUANCE: The last Federal appointment was made by a Republican President, and the man who received the appointment was a Democrat. The Judge of the Circuit Court of the District of Delaware that was last appointed was Judge Dallas, and he was appointed by Mr. Harrison. And Judge Dallas was a Democrat.

ROBERT W. DASEY: It is a fact that this vacancy which exists now is to be filled by a gentleman from Delaware, isn't it?

WILLIAM C. SPRUANCE: Yes.

ROBERT W. DASEY: There is a Judge to be appointed, and he will surely come from the party which my friend represents. And not only that, the first one that resigns or becomes disabled for any cause, his place will be filled from that political party, I will guarantee.

I cannot see, if we are going to make it non-partisan how we can make it any fairer than to have three out of the five Judges, allowing the Chancellor to remain outside so as to balance the Federal judgeship, an appointment for which is going to be made pretty soon.

JOHN BIGGS: Question on the motion.

JOHN P. DONAHOE: I call for the yeas and nays.

CHAIRMAN GILCHRIST: The Secretary will please call the roll.

Whereupon the Secretary called the roll with the following result:

Yeas: Messrs. Bradford, Biggs, Cooper, Dasey, Donahoe, Ellegood, Gilchrist, Hearne, Horsey, Johnson, Martin, Moore, and Orr.

Nays: Messrs. Burris, Cannon, Clark, Hering, Sapp, Spruance, and Wright.

Absent: Messrs. Carlisle, Cavender, Cooch, Evans, Harman, Murray, Pratt, Richards, Saulsbury, and Smithers.

Whereupon the Chair announced the result of the vote as follows:

Yeas, 13; Nays, 7. And declared the motion carried; and the amendment prevailed.

CHAIRMAN GILCHRIST: The question is now on the adoption of lines thirteen, fourteen and fifteen as amended of section three.

ANDREW L. JOHNSON: I call for the yeas and nays.

WILLIAM C. SPRUANCE: I would ask that the lines be read.

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CHAIRMAN GILCHRIST: The Secretary will please read the 13th, 14th and 15th lines as amended of section 3.

Whereupon the Secretary read the 13th, 14th and 15th lines as amended of section 3 as follows:

"The said appointments shall be such, that no more than three of the said five law Judges, in office at the same time, shall have been appointed from the same political party."

CHAIRMAN GILCHRIST: The Secretary will please call the roll.

Whereupon the Secretary called the roll with the following result:

Yeas: Messrs. Bradford, Biggs, Burris, Cannon, Clark, Dasey, Ellegood, Gilchrist, Hering, Martin, Moore, Orr, Spruance and Wright.

Nays: Messrs. Cooper, Donahoe, Hearne, Horsey, Johnson, and Sapp.

Absent: Messrs. Carlisle, Cavender, Cooch, Evans, Harman, Murray, Pratt, Richards, Saulsbury, and Smithers.

Whereupon the Chair announced the result of the vote as follows:

Yeas, 14; Nays, 6. And declared the motion carried; and lines thirteen, fourteen and fifteen, as amended, adopted.

WILLIAM C. SPRUANCE: Mr. Chairman, I think we are now in a position to change the numbering of these sections.

You will observe that section 4 was dropped out. In going over this thing I think that section 10 ought to be brought next after what is now section 5, or rather next after what is now section 6.

I therefore move that section 5 be made section 4, section 6 be made section 5, section 10 be made section 6, section 11 be made section 10, and thereafter the sections be numbered consecutively.

JOHN BIGGS: I second the motion.

Motion put and carried.

CHAIRMAN GILCHRIST: The sections are therefore re-numbered as stated in the motion.

WILLIAM C. SPRUANCE: Mr. Chairman, I move that we now take up for consideration section 13.

EDWARD G. BRADFORD: I second the motion.

Motion put and carried.

CHAIRMAN GILCHRIST: Section 13 is now before the Committee of the Whole for consideration.

WILLIAM C. SPRUANCE: I move that lines one, two, three, four and five of section 13 be adopted.

JOHN BIGGS: I second the motion.

WILLIAM C. SPRUANCE: I ask that the Secretary will read lines 1, 2, 3, 4 and 5 of section 13.

CHAIRMAN GILCHRIST: The Secretary will please read lines 1, 2, 3, 4, and 5 of section 13.

GEORGE H. MURRAY: Mr. President, I have a resolution to offer, and I ask that the Secretary read the same.

PRESIDENT BIGGS: The Secretary will please read the resolution.

Whereupon the Secretary read the resolution as follows:

Mr. Murray, from Committee on Accounts, submits the following report:

The Committee on Accounts recommends the adoption of the following resolution:

RESOLVED, That the President of the Convention be and he is hereby authorized to draw warrants upon the State Treasurer for printing and supplies on account of the contingent expenses of the Convention, as follows:

In favor of the *Delawarean* for six hundred and sixty-eight dollars and seventy-five cents;

In favor of the *Dover Index* for eighty dollars;

In favor of the *Sussex Republican* for sixteen dollars;

In favor of the State Sentinel Printing Company for three dollars.

JAMES B. GILCHRIST: Mr. President, I move that the report be accepted and the resolution adopted.

JOSHUA A. ELLEGOOD: I second the motion.

Motion put and carried.

PRESIDENT BIGGS: The report is therefore received and the resolution is adopted.

WILLIAM SAULSBURY: Mr. President, I have here the bill of Charles R. Jones for enrolling.

I move that it be referred to the Committee on Accounts.

CHARLES F. RICHARDS: I second the motion.

Motion put and carried.

PRESIDENT BIGGS: The bill is therefore referred to the Committee on Accounts.

JOHN W. HERING: Mr. President, I have here a bill in favor of the *Delawarean*.

I move that it be referred to the Committee on Accounts.

JOSHUA A. ELLEGOOD: I second the motion.

Motion put and carried.

PRESIDENT BIGGS: The bill is therefore referred to the Committee on Accounts.

WILLIAM C. SPRUANCE: Mr. President, the fact that the provision in reference to the appointment of the first Chancellor, Chief Justice and Associate Judges under this amended Constitution, as found in the tenth section of the Schedule, is in the Schedule and not in the Constitution has been the subject of some criticism.

It is claimed by some persons that it would not be valid in the Schedule; that it ought to have been in the Constitution.

Mr. President, as it is a vital section, and there ought to be no ground for cavil as to the legality of the first appointment of the Judges, if there is anything in that objection we ought to cure it while we may.

I have conferred with a number of the gentlemen of the Convention, lawyers and others, and they agreed that it would be wise to transfer that provision to the proper place in the Constitution.

After some conference, several of us have concluded that the proper place to transfer that to would be to the third section of the Judiciary report on page 46.

I therefore ask unanimous consent, Mr. President, as follows:

That section 10 of the Schedule be transferred to the third section of the fourth article of the Constitution so that said section shall read as follows:

PRESIDENT BIGGS: Is not that section 12 of the Schedule instead of section 10?

WILLIAM C. SPRUANCE: No, Sir; it is section 10 of the Schedule.

I ask the attention of the gentlemen to this fact: That there is a little confusion about the two Schedule pamphlets. The one that was reported by the Committee on Phraseology, as regards this particular section is not the one that was adopted.

We have a few copies before us of the printed Schedule as reported by the Committee of the Whole, and that is the one I am talking about; that is the one that has been adopted.

NATHAN PRATT: Mr. President, I have not a copy of that, and I would like to hear the section read.

PRESIDENT BIGGS: The Secretary will please read section 10 of the last printed Schedule.

WILLIAM C. SPRUANCE: It is not in the first report at all.

If the gentlemen will take that in hand they will see in a minute what is proposed to be transferred in that section.

So that that section down to the last word in the fourth line would read as follows:

"The Chancellor, Chief Justice and Associate Judges shall be appointed by the Governor, by and with the consent of a majority of all the Members elected to the Senate, for the term of twelve years."

Then strike out the word "and" at the end of the fourth line—this is in the Constitution—and insert as follows:

"Provided further that the Chancellor, Chief Justice and Associate Judges first to be appointed under this amended Constitution shall be appointed by the Governor without the consent of the Senate for the term of twelve years and the persons—

WILLIAM SAULSBURY: We have used the word "amended" in the Constitution.

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Strike out the following:

"Provided, however, Associate Judges first to be appointed by the Senate for the term of twelve years shall enter upon their office upon taking the oath of office."

Then the next it reads on.

PRESIDENT Spruance) asks us to the Judiciary, I

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WILLIAM C. SPRUANCE: Had we better leave the word "amended" in or strike it out?

PRESIDENT BIGGS: Will the Member (Mr. Spruance) just call to our attention to what part of the Constitution he wants to make a change in?

WILLIAM C. SPRUANCE: Page 46, section 3.

PRESIDENT BIGGS: What are the changes?

WILLIAM C. SPRUANCE: It will read as follows: "The Chancellor, Chief Justice and Associate Judges shall be appointed by the Governor, by and with the consent of a majority of all the Members elected to the Senate for the term of twelve years". Then after the word "years" make a period.

J. WILKINS COOCH: A period after "years" and then a capital letter?

WILLIAM C. SPRUANCE: No; a semi-colon.

PRESIDENT BIGGS: There is a comma there now.

WILLIAM C. SPRUANCE: Yes; but make it a semi-colon.

Strike out the word "and" and insert in lieu of that word the following:

"Provided, however, that the Chancellor, Chief Justice and Associate Judges first to be appointed under this amended Constitution shall be appointed by the Governor without the consent of the Senate for the term of twelve years, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon taking the oath of office prescribed by this amended Constitution."

Then the next word "if" shall begin with a capital I; and then it reads on.

PRESIDENT BIGGS: The Member from Wilmington (Mr. Spruance) asks unanimous consent that section 3 on page 46, relative to the Judiciary, be changed as follows:

That the comma after the word "years" in the fourth line be changed to a semi-colon; that the word "and" be stricken out, and in lieu thereof the following be inserted:

"Provided, however that the Chancellor, Chief Justice and Associate Judges first to be appointed under this amended Constitution shall be appointed by the Governor without the consent of the Senate for the term of twelve years, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon taking the oath of office prescribed by this amended Constitution".

Then to change the small "i" in the next word to a capital "I" and the remainder of that section to read as it is printed in the Constitution.

Are there any objections to that request being granted?

The Chair hears none, and the Secretary will therefore make the changes.

Whereupon the Secretary made the changes as directed by the Chair.

PRESIDENT BIGGS: The Secretary will please read the first part of that section 3 as it now stands changed by unanimous consent.

Whereupon the Secretary read the first part of section 3 as changed by unanimous consent as follows:

"Section 3. The Chancellor, Chief Justice and Associate Judges shall be appointed by the Governor, by and with the consent of a majority of all the Members elected to the Senate, for the term of twelve years; provided, however, that the Chancellor, Chief Justice and Associate Judges first to be appointed under this amended Constitution shall be appointed by the Governor without the consent of the Senate for the term of twelve years, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon taking the oath of office prescribed by this amended Constitution. If a vacancy shall occur" etc.

PRESIDENT BIGGS: Those are the corrections, therefore, that are made by unanimous consent.

WILLIAM C. SPRUANCE: Mr. President, I ask unanimous consent to correct the Schedule by striking out section 10 and making section 11 section 10, and numbering the subsequent sections consecutively.

PRESIDENT BIGGS: The gentleman from Wilmington (Mr. Spruance) asks unanimous consent that section 10 as adopted by the Convention heretofore be stricken out of the Schedule, the same being embodied in the Constitution; and in addition to that, that section 11 be numbered section 10, and the following numbers of the sections thereafter be numbered consecutively.

Is there any objection?

The Chair hears none, and unanimous consent is therefore given that section 10 be stricken from the Schedule, it already being embodied in the Constitution, and that section 11 be numbered section 10, and the sections thereafter be numbered consecutively.

The Secretary will please make the record to conform therewith.

WILLIAM SAULSBURY: Mr. President, I am instructed by the Committee on Accounts to submit the following report, which I ask to have read.

PRESIDENT BIGGS: The Secretary will please read the report.

Whereupon the Secretary read the report as follows:

The Committee on Accounts recommends the adoption of the following resolution:

RESOLVED, that the President of the Convention be, and he is hereby authorized to draw warrants upon the State Treasurer for supplies and services on account of the contingent expenses of the Convention as follows:

In favor of Clark & McDaniel, for fourteen dollars and thirty-nine cents;

In favor of cents;

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Motion put :

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CHAIRMAN GILCHRIST: The amendment therefore prevails.

WILLIAM C. SPRUANCE: I move the adoption of section 28 as amended.

EDWARD G. BRADFORD: I second the motion.

Motion put and carried.

CHAIRMAN GILCHRIST: Section 28 as amended is therefore adopted.

WILLIAM C. SPRUANCE: Mr. Chairman, in coming back over our work, the first thing that I observe that is undisposed of is the last three lines of section 3, which reads as follows:

"The said appointments shall be such, that no more than three of the said six Judges, in office at the same time, shall have been appointed from the same political party".

I move the adoption of those lines.

DAVID S. CLARK: I second the motion.

CHAIRMAN GILCHRIST: The Secretary informs me that there is an amendment to these three lines which has not been disposed of.

EDWARD G. BRADFORD: What is the amendment?

CHAIRMAN GILCHRIST: The Secretary will please read the amendment.

Whereupon the Secretary read the amendment as follows:

Strike out of the fourteenth line the word "six" and insert in lieu thereof the word "law"; so that it would read, "three of the said law Judges."

EDWARD G. BRADFORD: Just say the "five" law Judges.

WOODBURN MARTIN: I will accept the amendment.

JOHN BIGGS: As I understand the amendment as suggested by the Member from Christiana Hundred (Mr. Bradford) and as accepted by the Member from Seaford Hundred (Mr. Martin) it is to strike out the word "six" and substitute in lieu thereof the words "five law"; so that the second sentence would read, "The said appointments shall be such, that no more than three of the said five law Judges, in office at the same time, shall have been appointed from the same political party".

EDWARD D. HEARNE: That is the amendment now before the Committee?

CHAIRMAN GILCHRIST: Yes.

WILLIAM C. SPRUANCE: Mr. Chairman, it has been extremely gratifying to me to find prevalent in this Convention the very general feeling that we ought to do something by which we would make our Bench non-partisan, or if it be a better word, bi-partisan; that is, that we should not have them all of the same political party. I have in mind an old maxim that "equality is equity". If there be anything in this idea, let us go the whole figure; let us come right up to the mark. Why confine this matter of non-partisanship to five of our six judges? Why not let it run clear through? You will observe that the Chancellor is left out here, and that there will be no restriction in

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regard to his appointment; and yet under the provision which is proposed to be added in regard to the trial of election cases, while he does not sit below, yet he sits as a Judge on appeals, and surely if there is any class of cases in which the Judges should be as near as possible equally divided, it ought to be upon trial of election cases. If you leave this thing there as it is, you just throw out the whole principle; and the principle runs right straight through, that no more than three of your six Judges shall have been chosen from the same political party; not that a man may change his opinion after he is appointed—that of course we cannot control—that is all right; but they shall not be chosen from the same political party; not that the other party shall be chosen from any other party designating it, but that no more than three shall have been chosen from that particular party.

That seems to me to be fair, reasonable and equitable. It may not appear to be entirely necessary now to some of our friends on the other side of the chamber, but it would appear, I am quite sure, to be eminently just to our friends who sit in the rear of this side of the chamber if they should happen to be in the saddle.

DAVID S. CLARK: That is what is the matter.

WILLIAM C. SPRUANCE: If they were in the saddle, I should like certainly equality. We are not making a Constitution for today or for tomorrow. We are making it for all time. This may last probably for a generation, and it may be the last Constitution for two generations. We do not know in the upheaval of time how things may go. There may be then gentlemen who differ very very radically, and who may be suffering then as we are now.

Don't you think, Mr. Chairman, it would be fair all around if we just made this thing equal—not to consider for an instant who is to be the man who should name the first batch of these, because life is very uncertain. All of the gentlemen who shall be appointed by the present Governor who will have these appointments, will surely not live their terms out. It is unheard of, that six men appointed for a given time should all live twelve years. They won't do it. There will be gaps here and there and the chances are if they are men past middle life who are appointed, there will be big gaps in their number. So we had better look out unless this thing comes back upon us. I am as much satisfied in that in the future as you are in the present.

JOHN BIGGS: Maybe more so.

WILLIAM C. SPRUANCE: As the gentleman says, maybe more so. I do not know what is coming. I think this is the time for us to be even and square all around in this thing; so let us stick to the report of this Convention which was so impartially considered and had the approval and countenance and signatures of all our friends on the other side of the chamber who differed with us upon other subjects, except Mr. Harman. I do think we would be doing ourselves great honor all around, as we have here gentlemen who are able to look beyond the present circumstances and the present opportunities to the future, and the exigencies that may come with the years that may come, and that we would be more content and happy and safe if we applied the principle of equality as near as we might by the adoption of this.

JOHN BIGGS: The maxim which has been suggested by the gentleman from Wilmington (Mr. Spruance) that "equality is equity", is a very old one, but a very good one, and I am not here to dispute it or to gainsay it.

But I would like to call the Members' attention to the fact that the Superior Court, the Court of General Sessions and the Court of Oyer and Terminer are to be composed of five Judges and that those five Judges cannot be divided equally. It is a physical impossibility, and inasmuch as three of the five must come from one party or the other, it being a physical impossibility to make one man come from both parties, unless the Member from Wilmington (Mr. Spruance) can accomplish some anatomical feat that I have not yet learned of, it must necessarily follow that three out of the five must come from one political party or the other. And therefore I take it it is necessary, in order to carry out this equality in equity and the principle of equality in equity, and in order to show that generosity of which we have all been disposed to tender and carry out, that the offer of the amendment made by the Member from Seaford Hundred (Mr. Martin) would be carried out by this Committee.

WOODBURN MARTIN: I only have a word to say in this connection, Mr. Chairman, and that is this: My idea in offering this amendment coincided exactly with those expressed by my friend from Wilmington (Mr. Biggs) who has just taken his seat. I cannot see, out of five Judges composing a Court, how that Court could be made non-partisan unless you would get two from the Democratic Party and two from the Republican Party and one who was not anything on the face of the earth, and that would be almost impossible to do under existing circumstances.

EDWARD G. BRADFORD: The Single Taxers.

ROBERT W. DASEY: And Prohibitionists.

WOODBURN MARTIN: There is no danger of that. I have modified my views somewhat in offering this amendment. My first inclination was to substitute the word "four" for the word "three", "that no more than four of the six should come from the same political party"; but I thought I would do better than that, and knowing that our friends on the other side who are in a minority would remind us of that fact and tell us that we ought to be as charitable toward them as we could, and do as much for them as possible, I feel that I am disposed to do that. I do not think the Chancellor ought to be taken into consideration in this matter, but whatever party is in power should be allowed to appoint the Chancellor. He can be confirmed by three-fifths of the Senate.

The office of the Chancellor is a peculiar one. It is peculiar to himself. He has nothing to do with whatever but Chancery jurisdiction, except to sit in the Court of Errors and Appeals. This Court could be so arranged by whatever party was in power, if we should have a Bench divided three to three, that all of one party might hear the election cases in one case, and all of the other party might hear them upon appeal or writ of error. But I do not imagine for one instant that that thing will be done.

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And the reason I think it is desirable to have the minority party represented on our Bench is that they may bring about a fuller and freer discussion of these matters that come before them and that they may make fair and impartial decisions on those questions.

I think that this is the best that can be done. I think it is all that the people expect of us. It will not be a hardship on the people. It is hardly fair to presume that officers who are elected by the people will appoint certain officers to places who are not in accord with the wishes of the people as expressed at the polls. It is hardly to be expected that Democrats are elected to office to appoint Republican Judges, or that Republicans are elected to office to appoint Democrats; but they are expected to appoint those of their same political opinions.

Therefore, I would leave this office of Chancellor out of the question entirely and let that party which is in power, when a vacancy occurs, have the appointing of that office.

As to the Superior Court, of course, we can do nothing more than to have three from one party and two from the other. There are six Judges in our Superior Court and Court of Chancery, besides a Federal Judge which is usually given to this State, that is, to this district. If you want to make them even in the State, you cannot do any more than to give three of these officers to one party and four to the other, let it be which it may.

EDWARD G. BRADFORD: I shall state, Mr. Chairman, very frankly, the view I entertain about this matter. I understand that the report of the Committee, insofar as it provides that no more than three of the said six Judges shall have been appointed from one political party, is proposed to be amended by the insertion of "three of the said five law Judges".

I confess that to me it makes very little difference whether the report as originally made be adopted or this amendment be adopted, for as I regard the matter, this is not an act of the legislature which we are passing which may be in force for six months or a year or two years and then be repealed, but if this Constitution is adopted it may be in existence for fifty years and during that time in all human probability you will have, with the revolving years, political changes, and the situation as you find it today won't be the same as you may find it five years hence, or as you may find it ten years hence, or as you may find it fifteen years hence, or twenty-five years hence.

I think that in the course of time all that matter will adjust itself. Therefore, it makes very little difference to me as I say whether the three and three proposition stands, or the three of the five law Judges proposition stands. Of course, I would not be doing myself justice were I not to express my preference for a certain provision. That would naturally be my preference, because that would be the realization and the most complete in respect of what I should consider a non-partisan Bench. But, at the same time, I, for one, while I should be very much pleased indeed if some gentleman would withdraw that amendment and vote for the original bill—and I will say right here I do not propose to vote against that amendment, if it is pressed.

My views about this Constitution may have been rather peculiar from the start. From the very beginning I was in favor, as you gentlemen know, of a strictly non-partisan Convention, evenly divided, and did all within my power to bring about that result in New Castle County; and that was upon the ground that I had sufficient faith that when the business men were put up on each side they would not meet together as pot-house politicians and dispose of matters on that plane, but that they would discuss matters seriously as being the right thing, and I was perfectly willing to take my chances with such a Convention, because I thought they would do the right thing in the long run, and while there might be differences of opinion, there would be mutual concessions on both sides so that some instrument might emanate from this body which being adopted would be a credit to the State regardless of the political affiliations or opinions of the members of this or that particular party.

We have never had, since I have been a Member of this Convention, a line drawn upon any such subject, and I don't want to see a line drawn upon any such subject to the end of this Convention. I do not want to see it. I want to see this Convention harmonious from beginning to end.

Therefore, I say, that while it is against my natural desire and against my own notion of what would be the best thing to do, namely, an exactly equal division, I do not feel disposed, if that amendment is pressed, to antagonize it.

Having expressed these views, I do not know what more I can say upon the subject. After all, I think the matter will adjust itself in no very long time one way or the other. Things are bound to change one way or the other.

ANDREW L. JOHNSON: Mr. Chairman, as between the two propositions I have very little choice, but I am thoroughly opposed to compelling a Governor of this State to appoint any man on account of his political affiliations.

It is well known that our Judiciary at the present time have been appointed from one political party. That probably is not the best course to pursue, and I would be very glad to see the Governor of this State appoint well equipped men from another party. I would hail the day when it was done and would be glad to have it; but to vote to compel a Governor to appoint a man on account of his political affiliation, you are simply saying, 'You are put upon the Bench to look out for our party interests whenever they come up'. There is no other construction that you can put upon it. There can be no other, in my own mind, established, and that man is expected, whenever a political question arises, before that Court to take care of his own party rights or privileges.

For those reasons I am opposed to putting in the Constitution any provision that compels certain partisan appointments of the Judiciary.

JOSHUA A. ELLEGOOD: Mr. Chairman, when I was nominated and elected it was upon a non-partisan or bi-partisan ticket, five Democrats and five Republicans, and when I left my home and came to this Convention, I tried to leave, for the time being, politics behind me.

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Like the gentleman from Christiana Hundred (Mr. Bradford) I never want to see lines drawn here on questions or where we shall divide according to political opinions.

It seems to me in framing the organic law of this State, a law that may stand for fifty years as the basis for all future law until this Constitution is amended or made anew, it should not bear the finger marks of men who are of different party lines. If it is right that the Judges of this State should be divided equally politically, then let us make it so; if it is in the interest of public justice and the people of this State are more apt, under a system of that kind, to have justice done than under any other, then I am willing to make it so. But, on the other hand, if we consider that the Chancellor is not a law Judge, and that he will not be called in question to sit in political cases outside of the Court of Errors and Appeals, then let us vote for the amendment as it now stands.

As the gentleman from Christiana Hundred (Mr. Bradford) has well said, there will come a time in the history of all political parties when they must surrender their power to their opponents, and in times like that it is altogether in whose ox is being gored.

So I am like the gentleman (Mr. Bradford), I am willing to vote for either proposition if that is best, but if you take the Chancellor away and then you want to make three of the law Judges of one political party and two of another, I am perfectly willing to support that.

With these few words, I believe in all my future actions in this Convention that I shall cast my vote for what I consider to be the best interest of the people of Delaware without any reference whatever to my political opinion.

EDWARD D. HEARNE: Mr. Chairman, we are now living under the third Constitution of the State of Delaware, and this proposed amendment, or portion of the Judiciary report, I believe is the first reference that has ever been made to politics with respect to the appointment by the Constitution of our Judiciary. In none of the other Constitutions will you find any reference to it whatever.

I am a young man, but I have lived through periods in the State of Delaware when our State Judiciary was solidly composed of members of that political party which was in opposition to the party from which the present Judiciary was appointed. I have seen a complete change, and I, for one, in my observations of the workings of our Courts, have no fault to find with any decision that has ever been made by either Court, whether that was Republican or Democrat, on the score of politics. I cannot for the life of me see any just substantial legal reason why we should make any reference to the politics of our Judiciary. I say, I cannot see why we should do it.

ROBERT W. DASEY: This matter is like a great many others. The people ask for it and after they get it they don't appreciate it. It has been stated that there was not satisfaction given, no matter how able the Judges might be, when they were all from one political party. The time has been in the history of this State when they have all been from one political party and also the time when they have

been all from another political party, which is the case now. I think it would give more satisfaction to the people if the Judges were not all from the same political party. That is my opinion.

I want to state that I am as much opposed to anything of a partisan nature which tends to enter into our Judicial deliberations, as any gentleman on this floor. I want to be honest, and I want to be sincere. As the gentleman from Georgetown (Mr. Hearne) has said, this is the first time there has ever been offered a section of this nature to be entered into our Constitution. We might go further than is stated here. If we say six, we might say seven, because there is now a vacancy on the Federal Bench to be filled by the party represented by the gentlemen on the other side of this House; and that vacancy will surely be filled from that political party.

WILLIAM C. SPRUANCE: The last Federal appointment was made by a Republican President, and the man who received the appointment was a Democrat. The Judge of the Circuit Court of the District of Delaware that was last appointed was Judge Dallas, and he was appointed by Mr. Harrison. And Judge Dallas was a Democrat.

ROBERT W. DASEY: It is a fact that this vacancy which exists now is to be filled by a gentleman from Delaware, isn't it?

WILLIAM C. SPRUANCE: Yes.

ROBERT W. DASEY: There is a Judge to be appointed, and he will surely come from the party which my friend represents. And not only that, the first one that resigns or becomes disabled for any cause, his place will be filled from that political party, I will guarantee.

I cannot see, if we are going to make it non-partisan how we can make it any fairer than to have three out of the five Judges, allowing the Chancellor to remain outside so as to balance the Federal judgeship, an appointment for which is going to be made pretty soon.

JOHN BIGGS: Question on the motion.

JOHN P. DONAHOE: I call for the yeas and nays.

CHAIRMAN GILCHRIST: The Secretary will please call the roll. Whereupon the Secretary called the roll with the following result:

Yeas: Messrs. Bradford, Biggs, Cooper, Dasey, Donahoe, Ellegood, Gilchrist, Hearne, Horsey, Johnson, Martin, Moore, and Orr.

Nays: Messrs. Burris, Cannon, Clark, Hering, Sapp, Spruance, and Wright.

Absent: Messrs. Carlisle, Cavender, Cooch, Evans, Harman, Murray, Pratt, Richards, Saulsbury, and Smithers.

Whereupon the Chair announced the result of the vote as follows:

Yeas, 13; Nays, 7. And declared the motion carried; and the amendment prevailed.

CHAIRMAN GILCHRIST: The question is now on the adoption of lines thirteen, fourteen and fifteen as amended of section three.

ANDREW L. JOHNSON: I call for the yeas and nays.

WILLIAM C. SPRUANCE: I would ask that the lines be read.

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CHAIRMAN GILCHRIST: The Secretary will please read the 13th, 14th and 15th lines as amended of section 3.

Whereupon the Secretary read the 13th, 14th and 15th lines as amended of section 3 as follows:

"The said appointments shall be such, that no more than three of the said five law Judges, in office at the same time, shall have been appointed from the same political party."

CHAIRMAN GILCHRIST: The Secretary will please call the roll.

Whereupon the Secretary called the roll with the following result:

Yeas: Messrs. Bradford, Biggs, Burris, Cannon, Clark, Dasey, Ellegood, Gilchrist, Hering, Martin, Moore, Orr, Spruance and Wright.

Nays: Messrs. Cooper, Donahoe, Hearne, Horsey, Johnson, and Sapp.

Absent: Messrs. Carlisle, Cavender, Cooch, Evans, Harman, Murray, Pratt, Richards, Saulsbury, and Smithers.

Whereupon the Chair announced the result of the vote as follows:

Yeas, 14; Nays, 6. And declared the motion carried; and lines thirteen, fourteen and fifteen, as amended, adopted.

WILLIAM C. SPRUANCE: Mr. Chairman, I think we are now in a position to change the numbering of these sections.

You will observe that section 4 was dropped out. In going over this thing I think that section 10 ought to be brought next after what is now section 5, or rather next after what is now section 6.

I therefore move that section 5 be made section 4, section 6 be made section 5, section 10 be made section 6, section 11 be made section 10, and thereafter the sections be numbered consecutively.

JOHN BIGGS: I second the motion.

Motion put and carried.

CHAIRMAN GILCHRIST: The sections are therefore re-numbered as stated in the motion.

WILLIAM C. SPRUANCE: Mr. Chairman, I move that we now take up for consideration section 13.

EDWARD G. BRADFORD: I second the motion.

Motion put and carried.

CHAIRMAN GILCHRIST: Section 13 is now before the Committee of the Whole for consideration.

WILLIAM C. SPRUANCE: I move that lines one, two, three, four and five of section 13 be adopted.

JOHN BIGGS: I second the motion.

WILLIAM C. SPRUANCE: I ask that the Secretary will read lines 1, 2, 3, 4 and 5 of section 13.

CHAIRMAN GILCHRIST: The Secretary will please read lines 1, 2, 3, 4, and 5 of section 13.

SPONSOR Rep. Matushefske

COMMITTEE _____



HOUSE OF REPRESENTATIVES

129TH GENERAL ASSEMBLY

FIRST SESSION - 1977

HOUSE BILL NO. _____

581 JUN 30 1977

AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE 4, SECTIONS 2, 3 AND 12 OF THE CONSTITUTION OF THE STATE OF DELAWARE BY INCREASING THE SUPREME COURT TO FIVE JUSTICES AND PROVIDING FOR A QUORUM OF THE SUPREME COURT.

WHEREAS, an amendment to the Constitution of the State of Delaware was proposed in the 128th General Assembly, being Chapter 540, Volume 60, Laws of Delaware, as follows:

"An Act Proposing an Amendment to Article 4, Sections 2, 3 and 12 of the Constitution of the State of Delaware by Increasing the Supreme Court to Five Justices and Providing for a Quorum of the Supreme Court.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (two-thirds of the members elected to each branch thereof concurring therein):

Section 1. Article 4, Section 2 of the Constitution of the State of Delaware of 1897 is amended by striking the word "three" as it appears after the words "shall be" and before the word "Justices" in the first line of said section, and substituting in lieu thereof the word "five".

Section 2. Article 4, Section 3, paragraph 3 of the Constitution of the State of Delaware of 1897, as amended, is amended to read as follows:

"First, three of the five Justices of the Supreme Court in office at the same time, shall be of one major political party, and two of said Justices shall be of the other major political party."

Section 3. Article 4, Section 3, paragraph 5 of the Constitution of the State of Delaware of 1897, as amended, is amended by striking the word "three" as it appears in Article 4, Section 3, paragraph 5.

Section 4. Article 4, Section 12 of the Constitution of the State of Delaware of 1897, as amended, is amended to read as follows:

"§12. Composition of Supreme Court; designation of temporary Justices, quorum; opening and adjourning court.

Section 12. A quorum of the Supreme Court shall consist of not less than three Justices. The entire Court shall sit in any criminal case in which the accused has been sentenced to death and in such other civil and criminal cases as the Court, by rule, or the General Assembly, upon the concurrence of two-thirds of all the members elected to each house, shall determine. In case of a lack of quorum by reason of vacancies in their number, incapacity, or disqualification to sit by reason of interest, or to constitute a three-member panel of the Court, the Chief Justice of the Supreme Court, or if he is disqualified or incapacitated or if there is a vacancy in that office, the Justice, who by seniority is next in rank to the Chief Justice, shall have the power to designate judges from among the judges of the constitutional courts to sit in the Supreme Court temporarily to fill up the number of Justices required by law. It shall be the duty of the judges of the constitutional courts so designated to sit accordingly. No judge shall be so designated to sit in the Supreme Court in any cause in which he sat below. Any one of the Justices of the Supreme Court may open and adjourn court."

WHEREAS, the said proposed amendment was agreed to by two-thirds of all the members elected to each House in the said 128th General Assembly.

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (two-thirds of the members elected to each branch thereof concurring therein):

Section 1. The said proposed amendment is agreed to and adopted and shall forthwith become a part of the Constitution of the State of Delaware.

SYNOPSIS

This bill completes the amendment to the Delaware Constitution to increase the membership of the Supreme Court from three to five.



SPONSOR: Sen. Adams, Rep. Barnes

DELAWARE STATE SENATE

132ND GENERAL ASSEMBLY

SENATE BILL NO. _____

269 JUN 7 1983

AN ACT CONCURREING IN A PROPOSED AMENDMENT TO ARTICLE IV, SECTION 3 OF THE CONSTITUTION OF THE STATE OF DELAWARE RELATING TO THE JUDICIARY.

1 WHEREAS, an Amendment to the Constitution of the State of Delaware was proposed in the 131st
2 General Assembly being Chapter 377, Volume 63, Laws of Delaware, as follows:

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all
4 members elected to each House thereof concurring therein):

5 Section 1. Amend Section 3, Article IV of the Constitution of the State of Delaware by striking the
6 first paragraph beginning with the words "The Justice of the Supreme Court" and ending with the words
7 "full term" and substituting in lieu thereof the following:

8 "Section 3. The Justices of the Supreme Court, the Chancellor and the Vice-Chancellor or
9 Vice-Chancellors, and the President Judge and Associate Judges of the Superior Court shall be
10 appointed by the Governor, by and with the consent of a majority of all the members elected to the
11 Senate, for the term of twelve years each, and the persons so appointed shall enter upon the
12 discharge of the duties of their respective offices upon taking the oath of office prescribed by this
13 Constitution. The Governor shall submit his appointment within sixty (60) days after the occurrence
14 of a vacancy howsoever caused. If a vacancy shall occur, by expiration of term or otherwise, at a
15 time when the Senate shall not be in session, the Governor shall within sixty (60) days after the
16 happening of any such vacancy convene the Senate for the purpose of confirming his appointment to
17 fill said vacancy and the transaction of such other executive business as may come before it. Such
18 vacancy shall be filled as aforesaid for the full term. Notwithstanding a vacancy, whether occurring
19 when the Senate is or is not in session, an incumbent whose term has expired shall hold over in office
20 until the incumbent, or a new appointee, is confirmed and takes the oath of office for the next term,
21 but in no event shall an incumbent whose term has expired hold over in office for more than sixty

1 (60) days after the expiration of the term. In all instances the term of a new or reappointed Justice
 2 of the Supreme Court, Chancellor or Vice-Chancellor, President Judge or Associate Judge of the
 3 Superior Court shall begin on the date that the oath of office is taken, thus qualifying the individual
 4 to serve, but the appointment shall be forfeit if such oath is not taken within thirty (30) days of
 5 confirmation."

6 WHEREAS, the said proposed amendment was adopted by two-thirds of all members elected to each
 7 House of the the 131st General Assembly.

8 NOW, THEREFORE:

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all
 10 members elected to each House thereof concurring therein):

11 Section 1. The said proposed amendment is hereby concurred in and adopted, and shall forthwith
 12 become a part of the Constitution of the State of Delaware.

SYNOPSIS

The Delaware Constitution presently provides that if the Senate is not in session when a vacancy occurs in a constitutional judgeship by virtue of the expiration of a term, death, disability or resignation, the Governor must convene a special session within 30 days to act on a new appointment. The Constitution is silent as to when the Governor must make an appointment to fill such vacancy occurring when the Senate is in session, although the Delaware Supreme Court has opined that the Governor must act "...as promptly as may be reasonable and practicable in fulfillment of the urgencies of the judicial system of the State." In re Opinion of the Justices, Del. Supr., 320 A. 2d 735, at 738 (1974). However, if action is not taken by the time the previous term expires, the Delaware Constitution presently prohibits holding over in office by constitutional judges, Opinion of the Justices, Del. Supr., 189 A. 2d 777, at 779 (1963).

Recent Delaware history indicates that the Senate is seldom out of session for more than 90 days at a time, and that special sessions can be expensive and inconvenient. However, when incumbent constitutional judges are reappointed there are difficulties in case load management and insecurities from loss of salary, health, disability and pension benefits that result from breaks or gaps even of a short duration in the continuity of service. And whenever vacancies are filled by new appointees, losses of judicial manpower should be kept to an absolute minimum.

The proposed amendment addresses these deficiencies by providing for a limited period during which an incumbent holds over in office until he or a new appointee takes the oath for the next term. It also provides that the term of a judge or justice shall begin upon taking the oath which must be within 30 days of confirmation.

Author - Sen. Adams



SPONSOR: Sen. Vaughn & Rep. Valihura
Sens. McDowell Reps. Wagner
DeLuca Lavelle
Adams Stone
Simpson George
Keeley
Hudson

DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE BILL NO.

61 MAR 24 2005

AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE IV OF THE DELAWARE CONSTITUTION OF 1897 TO INCLUDE THE FAMILY COURT AND COURT OF COMMON PLEAS AS COURTS ESTABLISHED BY THE CONSTITUTION OF THE STATE OF DELAWARE AND ARTICLES III AND IV OF THE DELAWARE CONSTITUTION OF THE STATE OF DELAWARE TO DELETE REFERENCES TO THE ORPHAN'S COURT.

WHEREAS, AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF DELAWARE WAS PROPOSED IN THE 142ND GENERAL ASSEMBLY, BEING CHAPTER 299, VOLUME 74, LAWS OF DELAWARE, AND PASSED ON JUNE 29, 2004, AS FOLLOWS:

"AN ACT TO PROPOSE AN AMENDMENT TO ARTICLE IV OF THE DELAWARE CONSTITUTION OF 1897 TO INCLUDE THE FAMILY COURT AND COURT OF COMMON PLEAS AS COURTS ESTABLISHED BY THE CONSTITUTION OF THE STATE OF DELAWARE AND ARTICLES III AND IV OF THE DELAWARE CONSTITUTION OF THE STATE OF DELAWARE TO DELETE REFERENCES TO THE ORPHANS' COURT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

1 Section 1. Amend Article IV, Section 1 of the Constitution of the State of Delaware by adding the words "a Family Court,
2 a Court of Common Pleas," after the phrase "a Court of Chancery," and before the phrase "an Orphans' Court" as that phrase
3 heretofore appears.

4 Section 2. Amend Article IV, Section 2 of the Constitution by striking the second, third and fourth full paragraphs of said
5 Section, and substituting in lieu thereof the following:

6 "In addition to members of the Supreme Court there shall be other State Judges, who shall be citizens of the State and learned in the
7 law. They shall include: (1) the Chancellor and the Vice-Chancellors; (2) The President Judge and the Associate Judges of the
8 Superior Court, three of whom shall be Resident Associate Judges and one of whom shall after appointment reside in each county of
9 the State; (3) the Chief Judge and the Associate Judges of the Family Court; and (4) the Chief Judge and Judges of the Court of
10 Common Pleas, one of whom after appointment shall reside in each county of the State.

11 There shall also be such number of additional Vice-Chancellors, Associate Judges and Judges as may hereinafter be
 12 Act of the General Assembly. Each of such Vice-Chancellors, Associate Judges, and Judges shall be citizens of the
 13 learned in the law.

14 If it is otherwise impossible to determine seniority of service among the Vice-Chancellors, or among the said Assoc
 15 among the said Judges, they shall determine it by lot respectively and certify accordingly to the Governor.”.

16 Section 3. Amend Article IV, Section 3 of the Constitution of the State of Delaware by striking the word “
 17 phrase “or Vice-Chancellors,” as that phrase appears in the first sentence of the first paragraph of said Section by ad
 18 “, the Chief Judge and Associate Judges of the Family Court and the Chief Judge and Judges of the Court of Commo
 19 the phrase “Associate Judges of the Superior Court” as that phrase appears in the first sentence of the first paragraph
 20 Section; by adding the words “, Chief Judge or Associate Judge of the Family Court or Chief Judge or Judge of the C
 21 Common Pleas” after the phrase “Associate Judge of the Superior Court” as that phrase appears in the sixth sentence
 22 paragraph of said Section; and by redesignating current paragraph “Fourth” as paragraph “Sixth” and adding new par
 23 “Fourth” and “Fifth” after paragraph “Third” to read as follows:

24 “Fourth, at any time when the total number of Judges of the Family Court shall be an even number, not more than one
 25 Judges shall be of the same political party; and at any time when the total number of Judges shall be an odd number, th
 26 than a majority of one Judge shall be of the same political party.
 27 Fifth, at any time when the total number of Judges of the Court of Common Pleas shall be an even number, not more th
 28 of the Judges shall be of the same political party; and at any time when the total number of Judges shall be an odd numl
 29 more than a majority of one Judge shall be of the same political party.”.

30 Section 4. Amend Article IV, Section 4 of the Constitution of the State of Delaware by striking the word “and”
 31 phrase “or Vice-Chancellors,” as that phrase appears in the first sentence of said Section; and by adding the words “the
 32 and Associate Judges of the Family Court and the Chief Judge and Judges of the Court of Common Pleas” after the phra
 33 “Orphans’ Court” as that phrase appears in the same sentence.

34 Section 5. Amend Article IV of the Constitution of the State of Delaware by adding thereto a new Section imm
 35 following Section 7, which new Section shall read in its entirety as follows:

36 “§7A. Jurisdiction of Family Court.

37 Section 7A. The Family court shall have all the jurisdiction and powers vested by the laws of this State in the Fa
 38 Court.”.

Section 6. Amend Article IV of the Constitution of the State of Delaware by adding thereto a new Section, which Section shall read in its entirety as follows:

“§7B. Jurisdiction of Court of Common Pleas.

Section 7B. The Court of Common Pleas shall have all the jurisdiction and powers vested by the laws of this State in the Court of Common Pleas.”.

Section 7. Amend Article IV, Section 13 of the Constitution of the State of Delaware by deleting the phrase “, the Superior Court or the Orphans’ Court” as found in the title of said Section and replacing it with the phrase “or the Superior Court” and by striking paragraph (2) in its entirety, and substituting in lieu thereof the following:

“(2) Upon written request made by the Chancellor, President Judge of the Superior Court, the Chief Judge of the Family Court, or the Chief Judge of the Court of Common Pleas, or in the event of an absence or incapacity, by the next qualified and available Vice-Chancellor, Associate Judge or Judge, who is senior in length of service, to designate one or more of the State Judges (including the Justices of the Supreme Court) to sit in the Court of Chancery, the Superior Court, the Family Court or the Court of Common Pleas, as the case may be, and to hear and decide such causes in such Court and for such period of time as shall be designated. It shall be the duty of the State Judge so designated to serve according to such designation as a Judge of the Court designated. The provisions of this paragraph shall not be deemed to limit in any manner the powers conferred upon the judges of the Superior Court under Section 14 of this Article.”.

Section 8. Amend Article IV, Section 17 of the Constitution of the State of Delaware by striking the phrase “the Orphans’ Court” as it appears twice therein and adding the words “, the Family Court hereby established, the Court of Common Pleas hereby established” after “established” as it appears in the first sentence of said Section; by substituting the word “any” for the word “either” as it appears in the first sentence of said Section; and by adding the words “, the Family Court, the Court of Common Pleas” after the phrase “Superior Court” as that phrase appears in the second sentence of said Section.

Section 9. Amend Article IV, Section 18 of the Constitution of the State of Delaware by adding a second sentence thereto, which shall read as follows:

“Until the General Assembly shall otherwise provide, the Chief Judge of the Family Court and the Associate Judges of said Court, respectively, shall each singly exercise all the powers which any law of this State vests in the Judges of Family Court, whether as members of the Court or otherwise, and the Chief Judge of the Court of Common Pleas and the Judges of said Court, respectively, shall each singly exercise all the powers which any law of the State vests in the Judges of the Court of Common Pleas, whether as members of the Court or otherwise.”.

67 Section 10. Amend Article IV of the Constitution of the State of Delaware by adding the new Section 34A, which shall
68 read as follows:

69 "§34A. Continuation in office and designation of judicial officers of the Family Court and the Court of Common Pleas.

70 Section 34A. The Chief Judge and the Associate Judges of the Family Court and the Chief Judge and the Judges of the
71 Court of Common Pleas in office at and immediately before the time this amended Article IV of this Constitution becomes effective
72 shall hold their respective offices until the expiration of their terms, respectively, and shall receive the compensation provided by
73 law."

74 Section 11. Amend Article IV, Section 37 of the Constitution of the State of Delaware by striking the word "and" after the
75 phrase "the Chancellor," as it appears in the first sentence thereof; and by adding the words ", the Chief Judge of the Family Court
76 and the Chief Judge of the Court of Common Pleas" after the phrase "President Judge of the Superior Court" and before the period
77 "." in that same sentence.

78 Section 12. Amend Article III, Section 22 of the Constitution of the State of Delaware by striking the phrase ", Clerks of
79 the Orphans' Court" as that phrase appears therein.

80 Section 13. Amend Article III, Section 23 of the Constitution of the State of Delaware by striking the phrase ", Clerks of
81 the Orphans' Court" as that phrase appears therein.

82 Section 14. Amend Article III of the Constitution of the State of Delaware by striking Section 24 in its entirety.

83 Section 15. Amend Article IV, Section 1 of the Constitution of the State of Delaware by striking the phrase "an Orphans'
84 Court," as that phrase appears therein.

85 Section 16. Amend Article IV, Section 2 of the Constitution of the State of Delaware by striking the phrase "and of the
86 Orphans' Court" as that phrase appears twice therein.

87 Section 17. Amend Article IV, Section 3 of the Constitution of the State of Delaware by striking the phrase "and Orphans'
88 Court" as that phrase appears twice therein.

89 Section 18. Amend Article IV, Section 4 of the Constitution of the State of Delaware by striking "and of the Orphans'
90 Court" as that phrase appears therein.

91 Section 19. Amend Article IV, Section 5 of the Constitution of the State of Delaware by striking the phrase "and Orphans'
92 Court" as it appears in the title of the Section, and by striking the phrase "and the Orphans' Court" as it appears twice therein.

93 Section 20. Amend Article IV, Section 6 of the Constitution of the State of Delaware by striking the phrase "and Orphans'
94 Court" as it appears in the title of said Section, and by striking the phrase "and of the Orphans' Court" as it appears in the text.

95 Section 21. Amend Article IV, Section 8 of the Constitution of the State of Delaware by striking the phrase "and of the
96 Orphans' Court" as it appears therein.

97 Section 22. Amend Article IV, of the Constitution of the State of Delaware by striking Section 9 in its entirety.

98 Section 23. Amend Article IV, Section 14 of the Constitution of the State of Delaware by striking the phrase "and of the
99 Orphans' Court" as it appears therein.

100 Section 24. Amend Article IV, of the Constitution of the State of Delaware by striking Subsection (5) of Section 11 in its
101 entirety; by deleting the phrase " , the Court of Chancery and the Orphans' Court" as found in Subsection (6) of Section 11 and
102 replacing said phrase with the phrase "and the Court of Chancery"; and by renumbering all succeeding subsections accordingly.

103 Section 25. Amend Article IV, Section 18 of the Constitution of the State of Delaware by striking the phrase "and of the
104 Orphans' Court" as it appears therein.

105 Section 26. Amend Article IV, Section 31 of the Constitution of the State of Delaware by striking the phrase "Orphans'
106 Court" as it appears in the title and the fourth and fifth sentences of the Section, and inserting in each place the phrase "Court of
107 Chancery".

108 Section 27. Amend Article IV, Section 32 of the Constitution of the State of Delaware by striking the phrase "Orphans'
109 Court" as it appears in the title and the second and third paragraphs, and inserting in each place the phrase "Court of Chancery".

110 Section 28. Amend Article IV, Section 34 of the Constitution of the State of Delaware by striking the phrase "and of the
111 Orphans' Court" as that phrase appears twice therein.

112 Section 29. Amend Article IV, Section 36 of the Constitution of the State of Delaware by striking Section 36 in its
113 entirety."

114 WHEREAS, the said proposed amendment was adopted by two-thirds of all members elected to each House of the 142nd
115 General Assembly:

116 NOW THEREFORE:

117 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members
118 elected to each House thereof concurring therein):

119 Section 1. The said proposed amendment is hereby concurred in and adopted, and shall forthwith become a part
120 of the Constitution of the State of Delaware.

SYNOPSIS

This is the second leg of a Constitutional Amendment. These Constitutional Amendments implement the recommendations of the Commission on Delaware Courts 2000 by providing for the inclusion of the Family Court and the Court of Common Pleas in the Court structure of the Constitution of the State of Delaware, and making the Judges in said Courts

constitutional Judges. These amendments also delete references to the Orphans' Court, which was abolished by a prior act of the General Assembly.

Author: Senator Vaughn

SD : JJC : rma
2381430050

Page 6 of 6

A-106

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following offices can be filled by the appointment of the Governor with the concurrence of the Senate:

Judge of the Superior Court of the State of Delaware, New Castle County

(Due to the expiration of the term of the Honorable Peggy L. Abelman,
who is not seeking reappointment)

There are requirements of political balance under the Delaware Constitution Art. IV § 3 and, in this case, the appointee must be a member of the Democratic Party. The appointee must be a citizen of the State of Delaware. The position provides a current annual salary of \$180,233.

Judge of the Superior Court of the State of Delaware, New Castle County

(Due to the expiration of the term of the Honorable Joseph R. Slights III,
who is not seeking reappointment)

There are requirements of political balance under the Delaware Constitution Art. IV § 3 and, in this case, the appointee must be a member of the Democratic Party. The appointee must be a citizen of the State of Delaware. The position provides a current annual salary of \$180,233.

Two Judges of the Superior Court of the State of Delaware, New Castle County

(Due to the creation of two new positions by the 146th General Assembly)

There are requirements of political balance under the Delaware Constitution Art. IV § 3 and, in this case, at least one of the appointees must be a member of the Democratic Party and the other may be a member of the Republican Party. The appointee must be a citizen of the State of Delaware. The position provides a current annual salary of \$180,233.

Commissioner of the Superior Court, New Castle County

(Due to the expiration of the term of the Honorable Lynne M. Parker,
who is seeking reappointment)

There is a requirement of political balance under 10 Del. C. § 511(a) and, in this case, the appointee may be a member of either party. There also are requirements that the appointee be a resident of New Castle County and duly admitted to practice before the Supreme Court of the State of Delaware. The position provides a current annual salary of \$111,275.

* * * * *

Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be

obtained from the Commission by calling (302) 573-3500 (extension 3522) and asking for Jennifer Speakman or can be downloaded online at <http://courts.delaware.gov> by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than 12 noon, September 14, 2012, at the below-listed address. Interviews of candidates will be scheduled thereafter.

On August 15, 2012, the Judicial Nomination Commission published a notice for five other judicial offices. Candidates who wish to apply for any of those offices and who wish to be considered for any of the offices set forth in this notice, do not need to submit a second application but must submit a letter to the below-listed address no later than 12 noon on September 14, 2012, (a) stating each of the offices for which they wish to be considered and (b) providing an updated response to Question No. 44 of the Questionnaire for each additional office for which the candidate is applying.

Judicial Nominating Commission
Andre G. Bouchard, Esquire, Chairman
c/o Bouchard Margules & Friedlander, P.A.
222 Delaware Avenue, Suite 1400
Wilmington, DE 19801

Dated: August 17, 2012

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following office can be filled by the appointment of the Governor with the concurrence of the Senate:

Chief Justice of the Supreme Court of the State of Delaware
(Due to the retirement of Chief Justice Myron T. Steele)

There are requirements of political balance under the Delaware Constitution Art. IV § 3 and, in this case, the appointee may be a member of either the Democratic Party or the Republican Party. The appointee must be a citizen of the State of Delaware and learned in the law. The position provides a current annual salary of \$200,631.

Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 573-3500 (extension 3522) and asking for Jennifer Speakman or can be downloaded online at <http://courts.delaware.gov> by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than 12 noon, November 5, 2013, at the below-listed address.

Judicial Nominating Commission
Andre G. Bouchard, Esquire, Chairman
c/o Bouchard Margules & Friedlander, P.A.
222 Delaware Avenue, Suite 1400
Wilmington, DE 19801

Dated: October 14, 2013

Connell, Ryan (DOJ)

From: dsba-bounces@barlist.delawlist.org on behalf of List Admin <administrator@dsba.org>
Sent: Wednesday, August 19, 2015 10:07 AM
To: dsba@delawlist.org
Subject: [DSBA] Notice of Judicial Vacancies
Attachments: ATT00001.txt

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following offices may be filled by the appointment of the Governor with the concurrence of the Senate:

Vice Chancellor of the Court of Chancery of the State of Delaware
(Due to the retirement of Vice Chancellor Donald F. Parsons, Jr.)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution but, in this case, the appointee may be a member of either party. The position provides a current annual salary of \$180,733.

Judge of the Superior Court of the State of Delaware, New Castle County
(Due to the expiration of the term of The Honorable Mary M. Johnston, who is seeking reappointment)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution, and in this case, the appointee must be a member of the Republican Party. The appointee must be a citizen of the State of Delaware. The position provides a current annual salary of \$180,733.

Judge of the Family Court of the State of Delaware, New Castle County
(Due to the expiration of the term of The Honorable Arlene M. Coppadge, who is seeking reappointment)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution but, in this case, the appointee may be a member of either party. In addition, the appointee: (i) must reside in New Castle County; (ii) must be a resident of the State of Delaware for at least 5 years immediately preceding his or her appointment; and (iii) must be admitted to the practice of law before the Supreme Court of this State for period not less than 5 years prior to such appointment. The position provides a current annual salary of \$180,733.

Chief Magistrate of the Justice of the Peace Courts of the State of Delaware
(Due to the expiration of the term of Chief Magistrate Alan G. Davis, who is seeking reappointment)

There are no political balance requirements for this office. The position provides a current annual salary of \$125,927.

Commissioner of the Family Court of the State of Delaware, New Castle County
(Due to the retirement of Commissioner Mary Ann Herlihy)

There are no political balance requirements for this office. Any applicant must be a resident of the State of Delaware for at least five years immediately preceding his or her appointment. Non-incumbent applicants must be duly admitted to practice law before the Supreme Court of the State of Delaware. The position provides a current annual salary of \$111,775.

Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Staci Hammonds or can be downloaded online at <http://courts.delaware.gov> by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than **noon on Thursday, September 10, 2015** at the below-listed address. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
The Hon. William B. Chandler, III, Chairman
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: August 18, 2015

Connell, Ryan (DOJ)

From: doeLegal on behalf of DESCLMS Listserv (Delaware Courts)
<notify_listservAttorneys@doelegal.com>
Sent: Wednesday, December 16, 2015 3:47 PM
To: Connell, Ryan (DOJ)
Subject: Notice of Vacancy

Importance: High

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following office may be filled by the appointment of the Governor with the concurrence of the Senate:

Vice Chancellor of the Court of Chancery of the State of Delaware
(Due to the retirement of Vice Chancellor John W. Noble)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution, but in this case, the appointee may be a member of either party. The appointee must be a resident of the State of Delaware. The position provides a current annual salary of \$180,733.

Persons who meet the legal qualifications of the office described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Amy Garrahan or can be downloaded online at <http://courts.delaware.gov> by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than **12:00 noon on Friday, January 15, 2016** at the below-listed address. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
The Hon. William B. Chandler, III, Chairman
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: December 16, 2015

Connell, Ryan (DOJ)

From: dsba-bounces@barlist.delawlist.org on behalf of List Admin <administrator@dsba.org>
Sent: Tuesday, November 03, 2015 12:21 PM
To: dsba@delawlist.org
Subject: [DSBA] JNC: Notice of Vacancies re Superior Court Judge and Commission of Family Court
Attachments: ATT00001.txt

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following offices may be filled by the appointment of the Governor with the concurrence of the Senate:

Judge of the Superior Court of the State of Delaware, New Castle County
(Due to the retirement of The Honorable Fred S. Silverman)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution, and in this case, the appointee must be a member of the Democratic Party. The appointee must be a citizen of the State of Delaware. The position provides a current annual salary of \$180,733.

Commissioner of the Family Court of the State of Delaware, Sussex County
(Due to the retirement of The Honorable Pamela Holloway)

There are no political balance requirements for this office. Any applicant must be a resident of the State of Delaware for at least five years immediately preceding his or her appointment and reside in Sussex County. Non-incumbent applicants must be duly admitted to practice law before the Supreme Court of the State of Delaware. The position provides a current annual salary of \$111,775.

Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Amy Garrahan or can be downloaded online at <http://courts.delaware.gov> by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than **12:00 noon on Thursday, December 3, 2015** at the below-listed address. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
The Hon. William B. Chandler, III, Chairman
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: November 2, 2015

Connell, Ryan (DOJ)

From: doeLegal on behalf of DESCLMS Listserv (Delaware Courts)
<notify_listservAttorneys@doelegal.com>
Sent: Monday, February 06, 2017 2:48 PM
To: Connell, Ryan (DOJ)
Subject: Notice of Judicial Vacancy
Attachments: 2017 - Superior - Witham - Reappointment-C1.docx

DELAWARE JUDICIAL NOMINATING COMMISSION
NOTICE OF VACANCY

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following office may be filled by the appointment of the Governor with the concurrence of the Senate:

Resident Judge of the Superior Court of the State of Delaware, Kent County

(Due to the expiration of the term of the Honorable William L. Witham Jr.,
who is seeking reappointment)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution, and in this case, the appointee must be a member of the Republican Party. In addition, the appointee must be a citizen of the State of Delaware and reside in Kent County. The position provides a current annual salary of \$183,444.

Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a completed copy of the "Questionnaire for Nominees for Judicial Office." A copy of the Questionnaire can also be obtained online at <http://courts.delaware.gov/career/> under the "Judicial Officer Postings" heading. *Please note that the JNC has published a revised version of the Questionnaire, dated March 30, 2016, that includes minor changes to some of the questions and revised instructions for submission, including a reduced number of required paper copies and a requirement to submit a copy of the application materials via email. If you have applied for previous judicial officer positions, please make sure your application reflects the most current version of the Questionnaire.* Any person desiring to suggest candidates is invited to write to the Commission. Any questions about the Questionnaire or the application process should be directed to the JNC Chair.

Completed Questionnaires must be received no later than **12:00 noon on Friday, February 24, 2017** at the below-listed address, with a copy of all application materials submitted via email to JNC@state.de.us. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
Attn: Gregory Brian Williams, Esq., Chairman
c/o Fox Rothschild LLP
Citizens Bank Center
919 North Market Street, Suite 300
Wilmington, DE 19899-2323
(302) 622-4211
A-113

Connell, Ryan (DOJ)

From: dsba-bounces@barlist.delawlist.org on behalf of List Admin <administrator@dsba.org>
Sent: Thursday, August 20, 2015 3:34 PM
To: dsba@delawlist.org
Subject: [DSBA] Notice of Judicial Vacancy
Attachments: ATT00001.txt

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following office may be filled by the appointment of the Governor with the concurrence of the Senate:

Judge of the Family Court of the State of Delaware, New Castle County
(Due to the retirement of the Honorable William L. Chapman, Jr.)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution but, in this case, the appointee may be a member of either party. In addition, the appointee: (i) must reside in New Castle County; (ii) must be a resident of the State of Delaware for at least 5 years immediately preceding his or her appointment; and (iii) must be admitted to the practice of law before the Supreme Court of this State for period not less than 5 years prior to such appointment. The position provides a current annual salary of \$180,733.

Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Staci Hammonds or can be downloaded online at <http://courts.delaware.gov> by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than **noon on Thursday, September 10, 2015** at the below-listed address. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
The Hon. William B. Chandler, III, Chairman
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: August 19, 2015

Connell, Ryan (DOJ)

From: dsba-bounces@barlist.delawlist.org on behalf of List Admin <administrator@dsba.org>
Sent: Monday, November 02, 2015 10:55 AM
To: dsba@delawlist.org
Subject: [DSBA] JNC Notice of Vacancy
Attachments: ATT00001.txt

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following office may be filled by the appointment of the Governor with the concurrence of the Senate:

Judge of the Family Court of the State of Delaware, New Castle County
(Due to the death of the Honorable Alan N. Cooper)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution but, in this case, the appointee may be a member of either party. In addition, the appointee: (i) must reside in New Castle County; (ii) must be a resident of the State of Delaware for at least 5 years immediately preceding his or her appointment; and (iii) must be admitted to the practice of law before the Supreme Court of this State for period not less than 5 years prior to such appointment. The position provides a current annual salary of \$180,733.

Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Amy Garrahan or can be downloaded online at <http://courts.delaware.gov> by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

*****Due to the unexpected occurrence of this vacancy, the Judicial Nominating Commission has agreed to conduct a modified and expedited selection process. The JNC will accept applications on an expedited basis from applicants who did not apply for the position of Family Court Judge in September 2015. Candidates who submitted an application for either of the two Family Court Judge positions in September 2015 will automatically be considered for this position and do not need to submit an application for this vacancy. The JNC does not intend to re-interview these candidates. Any candidate who applied for a Family Court Judge position in September 2015 but does not wish to be considered for this vacancy should notify the Judicial Nominating Commission in writing on or before the due date listed below.***

Completed Questionnaires for candidates who did not submit an application for Family Court Judge in September 2015 must be received no later than 5:00 p.m. on Thursday, November 5, 2015 at the below-listed address. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
The Hon. William B. Chandler, III, Chairman
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: October 30, 2015

Connell, Ryan (DOJ)

From: doeLegal on behalf of DESCLMS Listserv (Delaware Courts)
<notify_listservAttorneys@doelegal.com>
Sent: Wednesday, November 23, 2016 2:45 PM
To: Connell, Ryan (DOJ)
Subject: Notice of Judicial Vacancy Posting
Attachments: 2016-11-23 JNC Notice of Vacancy--Family Court (Waserstein)-C2.docx

DELAWARE JUDICIAL NOMINATING COMMISSION

NOTICE OF VACANCY

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following office may be filled by the appointment of the Governor with the concurrence of the Senate:

Judge of the Family Court of the State of Delaware, New Castle County
(Due to the retirement of the Honorable Aida Waserstein)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution but in this case, the appointee may be a member of either party. In addition, the appointee: (i) must reside in New Castle County; (ii) must be a resident of the State of Delaware for at least 5 years immediately preceding his or her appointment; and (iii) must be admitted to the practice of law before the Supreme Court of this State for period of not less than 5 years prior to such appointment. The position provides a current annual salary of \$183,444.

Persons who meet the legal qualifications of the office described above are invited to file with the Commission a completed copy of the "Questionnaire for Nominees for Judicial Office." A copy of the Questionnaire can also be obtained online at <http://courts.delaware.gov/career/> under the "Judicial Officer Postings" heading. Please note that the JNC has published a revised version of the Questionnaire, dated March 30, 2016, that includes minor changes to some of the questions and revised instructions for submission, including a reduced number of required paper copies and a requirement to submit a copy of the application materials via email. If you have applied for previous judicial officer positions, please make sure your application reflects the most current version of the Questionnaire. Any person desiring to suggest candidates is invited to write to the Commission. **Any questions about the Questionnaire or the application process should be directed to the JNC Chair, NOT to the JNC@state.de.us email address.**

Completed Questionnaires must be received no later than **12:00 noon on Wednesday, December 14, 2016** at the below-listed address, with a copy of all application materials submitted via email to JNC@state.de.us. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
Attn: Gregory Brian Williams, Esq., Chairman
c/o Fox Rothschild LLP
A-116

Citizens Bank Center
919 North Market Street, Suite 300
Wilmington, DE 19899-2323
(302) 622-4211

Dated: November 23, 2016